

1 easier. And you might be able to ask things a little  
2 differently. And given more depth, absolutely.

3 **THE COURT:** Would you have more confidence in the  
4 outcome as to whether or not this person really has formed or  
5 expressed an opinion as to the defendant's innocence or  
6 guilt? If you had the voir dire process, as I have described  
7 it to you, versus your telephone survey?

8 **THE WITNESS:** If -- I'm not certain how to answer  
9 that, because I have never been in the other, had experience  
10 using the other process. But I would certainly say if you  
11 are able to have a more one-on-one conversation with somebody  
12 and change, change the wording to make them understand or to  
13 ask different questions, there could be a somewhat different  
14 outcome. But what we do is, we measure within a certain  
15 error rate the accuracy of the questions we feel the public  
16 is capable of answering.

17 **THE COURT:** Okay.

18 **THE WITNESS:** And that is sometimes a little bit  
19 different. But it is a good read on these questions within  
20 the error. There's always that error rate of how the public  
21 feels. The public isn't thinking -- based on our experience,  
22 the minute we get something too complicated and we pretest  
23 it, a question that takes a little more thought, we lose  
24 people over the telephone. It's not that if they didn't sit  
25 and think about it they wouldn't understand it, but that it's

1 much, much more difficult to get that.

2 **THE COURT:** Just because this has been wandering in  
3 the back of my mind ever since I first saw your survey, do  
4 you take into account some people that would treat a survey  
5 like this in a very frivolous fashion?

6 **THE WITNESS:** Just by experience?

7 **THE COURT:** Yes.

8 **THE WITNESS:** They don't stay on the phone. They  
9 don't -- generally, people -- people are basically nice.  
10 People are basically good. And if they stay on the phone to  
11 answer the questions, they really answer them. I would say,  
12 you know, just a guess, I would say 98, 99 percent of the  
13 people try to give you an answer that they feel is the  
14 correct one for them to give.

15 **THE COURT:** And is that one or 2 percent that your  
16 experience over these last 27 years would give you, is that  
17 within the error rate that you already gave us?

18 **THE WITNESS:** That's within the error rate. And part  
19 of the people that I think might struggle, I think there are  
20 occasionally people who don't understand the questions.

21 **THE COURT:** Okay.

22 **THE WITNESS:** And I think that enters into those  
23 percents of people who if a question gets too complicated --

24 **THE COURT:** They turn off.

25 **THE WITNESS:** Yeah. It's difficult for them to

1 answer. And we can tell that we just get -- if we make a  
2 question too complicated, and we can tell we get an answer  
3 that's just flipped out. That's why we do pre-test. And we  
4 keep things very, very simple and very straight forward.

5 **THE COURT:** Mr. Bugden, I didn't want to turn this  
6 into a dialogue, just a conversation just between us.

7 Counsel, I'm sure you had some things you wanted to cover.

8 **BY MR. BUGDEN:**

9 Q I did. So, let me try to follow up on the judge's  
10 question, which we would have gotten to, but we'll talk about  
11 it right now for a moment. Then I'll come back to the source  
12 of information on neighbor or friend. So, one of the  
13 questions the judge asked about ten minutes ago was whether  
14 or not in the survey there had been some attempt by the  
15 surveyors, by you in your methodology, to create a filter to  
16 try to look at again the narrow question of, the ultimate  
17 question, do you hold an opinion about whether Mr. Jeffs is  
18 guilty or not. So, we have question 16. But there were also  
19 questions where you asked whether or not they knew what he  
20 was charged with; is that correct?

21 A That's correct, yes.

22 Q And we've actually given to the judge, and you have  
23 written the survey questionnaires, wrote verbatim the  
24 response of what they believe Mr. Jeffs was charged with; is  
25 that right?

1           A     That's correct. We ask the question, first of all,  
2     "Do you happen to know what Warren Jeffs is charged with?"  
3     If they said yes, they did, then they were asked a follow-up  
4     question that said, "From what you know or have heard, what  
5     crime is he charged with?" Those are what we call open-ended  
6     or unstructured questions. We don't have an answer that is  
7     there. It's a blank line, basically, on the computer. And  
8     it allows the respondent to give whatever response they want  
9     or whatever response they think best.

10          Q     Then you also asked an open-ended question about what  
11     have you heard about Mr. Jeffs?

12          A     That's correct. That was question number eight.

13          Q     So, and we will get there to try to answer the  
14     judge's question. But, in fact, you did build into the  
15     survey a number of things that both were narrow as to, Do you  
16     have an opinion about his guilt or innocence and, also, what  
17     can you tell us that you know about this case; is that right?

18          A     That's correct. Those are aided questions and  
19     unaided.

20          Q     Now, the judge as someone who has done voir dire for  
21     maybe a thousand juries --

22                 What do you think, judge?

23                 **THE COURT:** Over 500, counsel.

24                 **THE WITNESS:** Voir dire?  
25

1 BY MR. BUGDEN:

2 Q Voir dire means French to speak the truth. So, when  
3 the judge is picking the jury, he will ask jurors to answer  
4 questions honestly about whether or not they could be fair or  
5 not or what they know about a particular case. From your  
6 experience, and I mean your collective experience with Dr.  
7 Jones, did you and Dr. Jones at some point in your career --  
8 let me ask this question. Before the Warren Jeffs case, were  
9 you also involved with Dan Jones & Associates, has your  
10 business been involved in doing venue change analysis in  
11 other criminal cases?

12 A Yes, we have.

13 Q And have you encountered, or do you believe from a  
14 professional standpoint that there is a difficulty in asking  
15 a question like, Do you understand that the defendant is  
16 presumed to be innocent and that the government has the  
17 burden of proof and that the government has to prove beyond a  
18 reasonable doubt all of the elements of the particular crime  
19 and that your own personal opinions about polygamy can have  
20 nothing to do with your guilt or innocence determination in  
21 this case? Would it be difficult for you as a surveyor to  
22 ask a question with that length and that breadth, that kind  
23 of complexity?

24 A Absolutely, yes, it would. But -- yeah, it would.

25 Q Okay. And now I would like to ask you, again, your

1 professional experience, have you encountered difficulties  
2 associated with asking survey respondents something simple  
3 like, Do you intend to vote or are you going to vote? Is  
4 there difficulty getting a straight answer and honest answer  
5 on that kind of a question?

6 A Most questions, there is not a -- most people will  
7 answer anything. And it would surprise you some of the  
8 things that they will answer. Probably the most challenging,  
9 one of the most challenging things that we asked is the  
10 question, in fact, you brought up a good one. Do you vote?  
11 Because it's so -- a lot of people kind of see it as  
12 unAmerican not to do this. And so, that is probably one of  
13 the most challenging questions or types of questions that we  
14 have where we ask them something about them that if they say,  
15 no, makes them look bad or makes them feel like they look  
16 bad. So, that's probably one of the questions that I would  
17 say is challenging for us to ask. We do ask people if they  
18 are registered to vote. We do often ask them, did you vote  
19 in the last election on surveys? But a general question, do  
20 you vote, do you vote in elections, it's a tougher one.

21 Q Because the respondents are not as likely to be  
22 completely candid about whether they will or will not vote?

23 A Because most -- most people want to be -- want to  
24 appear to be good or want to be seen as a good American. You  
25 know, yes, I vote. That's a challenging -- it's a

1 challenging question in the broad sense.

2 Q Okay. Now, I want to step back to the neighbor and  
3 friend question, which was number 13, with that as a source  
4 of information. Then we'll move on. But this was the last  
5 question I had on this when the judge asked you some  
6 questions. So, based on this difference, if we juxtapose the  
7 30 percent in Washington County to the 12 percent in Salt  
8 Lake County where a neighbor or friend was the source of  
9 information about the Warren Jeffs matter, what would you say  
10 whether that reflects, or what conclusions do you reach as an  
11 expert in the field about whether the Warren Jeffs case is  
12 more embedded in the consciousness of people in Washington  
13 County than Salt Lake City?

14 A Given the results of the question, it was asked the  
15 same to all three of the groups. It has been a greater  
16 source of discussion or there has been more exposure for  
17 those that answered the interview in Washington County than  
18 in the other two counties.

19 Q Okay. Now, I would like to ask you some questions  
20 about the ultimate question in this survey, a question about  
21 whether or not the respondent -- let's see here -- had an  
22 opinion about guilt or innocence with regard to the crime  
23 that he was charged, with which he was charged. Can you  
24 explain to the judge the categories that the respondents  
25 could choose?

1           A     Um, the question was, "Do you feel the suspect is  
2 guilty or innocent of the crime with which he is charged?"

3                     We have the categories of definitely guilty, probably  
4 guilty. There is a "don't know" category. And then,  
5 probably not guilty and definitely not guilty. So, it's a  
6 scaled question.

7           Q     And now, can you tell us about or, at least, compare  
8 for us then the survey results in the category of definitely  
9 guilty?

10           A     Um, those people who live in Washington County are  
11 more likely to have formed an opinion of definite guilt by  
12 the numbers, 52 percent, and in Iron County, 54 percent. In  
13 Salt Lake County, it is 39 percent, which is lower. Now,  
14 this is of definite guilt. That's the category I was reading  
15 across. There is also a category that is of probably guilty:  
16 Washington County, 23. Iron, the same, or, basically, the  
17 same percentage at 23. And Salt Lake County, probably guilty  
18 at 39 percent.

19           Q     From your experience with these answers, this  
20 category, I want you to describe for the judge and discuss  
21 the category of definite guilt and compare that, if you  
22 would, to the category of probably guilty. What do you know  
23 as a surveyor about people that express an opinion about  
24 definitely something versus probably something?

25           A     One of the things that we do in survey research is we



1 put things on a scale, because everything isn't black and  
2 white. You'll get, occasionally we'll ask a question, a yes  
3 or no question, but our minds, generally, a lot of times our  
4 minds don't think in an absolute yes/no. Did you drive the  
5 car to work today? That's an easy thing. Yes. No. You  
6 know, but when you get down to questions where it isn't as  
7 simple as a yes/no, we usually try to put some kind of  
8 scaling in to degree, to show different degrees. This is one  
9 in which we did that. So, definitely guilty and probably  
10 guilty, though both are saying the word guilty, those that  
11 are in the probably category, their opinions aren't as  
12 strong. They are not as formed. In other words, they can be  
13 moved. We see this, we do this a lot when we measure voting  
14 before the election. Those people that are in the probably,  
15 I'm probably going to vote for this person, there is a chance  
16 that their opinions can be changed. But it's very, very  
17 difficult to sway people who are in definite categories or  
18 who choose the word definite as part of their response. I  
19 should say that when a respondent or when an interviewer  
20 reads this, they do read the words, Do you feel the suspect  
21 is guilty or innocent with the crime with which he is  
22 charged? And the interviewers actually read definitely  
23 guilty, probably guilty, probably not guilty, definitely not  
24 guilty. So, they are given that option to choose between a  
25 very strong opinion and a not so strong opinion.

1 Q From your experience, then, the people that are in  
2 the probably category, whether it's probably guilty or  
3 probably not guilty, those people can be swayed? Those  
4 people do not have an unequivocal opinion?

5 A That's what we find. And this is true of almost  
6 everything we measure, is that those people who choose to  
7 place themselves in definite categories are more, their  
8 opinions are stronger and more formed into those categories.  
9 And we use the strong -- I mean, we use a stronger word. We  
10 use definite and probably. Those are two -- the meaning is  
11 quite clear we -- to the people that we talk to.

12 Q Now, comparing the categories, or comparing  
13 Washington County to Salt Lake County, and the category of  
14 definitely guilty, we have a 13 percent difference  
15 statistically. Is that a big number? Is that a significant  
16 difference?

17 A There is a difference there, yes, there is.

18 Q And from a political campaign, Hillary Clinton  
19 against Obama, would you guys say that that's a runaway? I  
20 mean, is that such a large difference that you would say that  
21 so and so is going to win?

22 A Certainly, on election morning I would want to be the  
23 one that's 13 points ahead.

24 Q In the probably guilty, here, when we compare  
25 Washington County at 23 percent to Salt Lake County, the

1 higher percentage of 16 percent, higher 39 percent, again,  
2 what does that say about Salt Lake County in terms of a  
3 jurisdiction where the defendant is more likely to be --  
4 where we are more likely to find impartial people, people  
5 haven't already formed an opinion?

6 A That's what the numbers would -- that's what the  
7 numbers are telling us, that there is a 16 percent  
8 difference. We still have people that are saying probably  
9 guilty. But their opinions aren't as strong. They don't  
10 hold those opinions as firmly as people who would choose to  
11 use the word definitely.

12 Q Now, you also asked the respondents in question nine  
13 if they knew what crime Mr. Jeffs was charged with; is that  
14 right?

15 A Yes.

16 Q And can you read for the judge from Washington  
17 County, just five or six, you know, just five or six of the  
18 answers --

19 **THE COURT:** Counsel, rather than take the time to do  
20 that, I have read every word, every page of this document.

21 Mr. Belnap, on behalf of the state, do you have any  
22 objection of the court receiving Court's Exhibit No. 1?

23 **MR. BELNAP:** No, Your Honor.

24 **THE COURT:** No. 1 is received, counsel. And it  
25 speaks for itself. We don't need to make Miss Meppen read

1 the things that she also has read very carefully.

2 **THE WITNESS:** Over and over.

3 **THE COURT:** Over and over.

4 **BY MR. BUGDEN:**

5 Q Can you explain the data that compares question ten  
6 with question 16?

7 A Oh, yes. We did what we call a cross-tabulation. We  
8 do what -- we tabulate all day by demographics, by age and  
9 gender and things like that. This is a cross-tabulation  
10 where we took one question and put it in the computer and  
11 compared results. This particular question is question  
12 number -- sorry. Let me get to that point in here. Question  
13 number ten, from what you know or have heard, what charge is  
14 he, um -- what is he charged with? What crime is he charged  
15 with? Then we cross-tabulated it in the computer against  
16 question 16. And that is the question about whether they had  
17 formed an opinion of guilt. So, across the left-hand side we  
18 show the different counties and the question of whether they  
19 had given a correct response in terms of knowledge of the  
20 charge, a partially correct response or an incorrect response  
21 in each of the counties. And then we took it. And we had  
22 the computer cross-tabulate it against their, the question  
23 number 16 was, the question of whether they already had an  
24 opinion of guilt or innocence or not guilty. So, you can see  
25 the actual number that responded down the actual number

1 column, and then the percents in each of the underneath each  
2 heading. Kind of gets complicated.

3 *THE COURT:* So, that if I looked at the respondents  
4 in Washington County who had a correct response, knowing that  
5 Mr. Jeffs is charged with two counts of rape as an  
6 accomplice --

7 *THE WITNESS:* Yes.

8 *THE COURT:* -- of that 99 people who got that  
9 correct, 53 percent of that 99 people, 52 of them, would have  
10 had the opinion that he is definitely guilty, 26 percent  
11 would have said that he's probably guilty of these specific  
12 charges that they know that he's charged with. 19 percent  
13 only would say we don't know. And 1 percent each for  
14 probably and definitely not.

15 *THE WITNESS:* Yes. That's correct.

16 *THE COURT:* All right. So, I've got one a definite  
17 no. One a probable no. And 19 don't know. And roughly 79  
18 that place him in the guilty category?

19 *THE WITNESS:* Yes. Yes. They place him in the  
20 definitely or probably guilty category.

21 *THE COURT:* As I go to a partially correct response  
22 where they may be, at least, we are in the ball park, we are  
23 not talking about an unlicensed dog case here --

24 *THE WITNESS:* Right.

25 *THE COURT:* -- then, in that circumstance, I can look

1 of 22, 11 percent would say definitely, or 11 of the 22 would  
2 say definitely guilty, and then, roughly, five probably. And  
3 then down to don't know and probably not and definitely not.  
4 Nobody gave him that response there?

5 **THE WITNESS:** That's correct.

6 **THE COURT:** Okay. And of the 50 that had the  
7 incorrect response, that didn't know a thing, those were the  
8 most absolutely certain that he's guilty of something they  
9 didn't even know what he was charged with.

10 **THE WITNESS:** That's what the figures show.

11 **THE COURT:** Does that bother you?

12 **THE WITNESS:** Yes. Now, I do need to say that I  
13 think you have probably gone through the responses. And so,  
14 you can see how we have tried --

15 **THE COURT:** And I realize your responses are doing  
16 the best you can.

17 **THE WITNESS:** Yeah, exactly. Um -- yeah.

18 **BY MR. BUGDEN:**

19 Q Well, isn't it concerning, ma'am, that in Washington  
20 County that whether they have the correct response, know the  
21 actual crime, or they have a completely incorrect  
22 understanding of what he's charged with that the numbers are  
23 so much higher in Washington than in Salt Lake? So, the  
24 correct response, knowing what crime, 53 percent think he's  
25 definitely guilty in Salt Lake, only 32 percent with a

1 completely nuts wrong answer, 62 percent in Washington County  
2 think he's definitely guilty. But, in Salt Lake, with a  
3 correct or incorrect response, less than 50, only 48 percent,  
4 doesn't that again show that in Washington County more people  
5 have formed the opinion that Mr. Jeffs is definitely guilty?

6 A Yes. By those numbers, it absolutely does.

7 Q Now, question number eight was the open-ended  
8 question, or one of the open-ended questions where you asked,  
9 What have you heard about this case; is that right?

10 A Yes.

11 Q And with your permission, judge, I just -- I know  
12 that you have received the exhibit, but I just want to  
13 briefly explore this question with the witness, if I might.

14 What's the significance of open-ended questions  
15 from a survey perspective?

16 A The primary significance in this case was to find out  
17 on this particular question, what have you heard about the  
18 case, was to measure kind of the depth of understanding, what  
19 they -- whether they are even talking about the correct case,  
20 whether the name is being identified with something else.

21 Q And --

22 A It's to measure their accuracy of a response. It's  
23 to measure the depth of their feelings as well.

24 Q Does it give some color?

25 A Absolutely.

1 Q Some three day color or some 3-D perspective to the  
2 numbers?

3 A Absolutely. It describes what they are thinking, or  
4 they describe what they are thinking, would be a better way  
5 to put it, I guess.

6 Q And turning your attention to Washington County, can  
7 you just read several of the interesting comments that you  
8 have put in the category of interesting comments people from  
9 Washington County, what they had heard about the case.

10 A "Um, all I know is what I read in the paper. I  
11 wouldn't be for him at all. That is for sure." Going to the  
12 bottom, I'm just going back and forth, bottom and top, or  
13 whatever. "Well, I'm very prejudice. I think he's guilty.  
14 Everything, it's so close in Washington County that it's a  
15 hot topic and everyone's talking about it. I have pretty  
16 much read everything that the media has put out. He is the  
17 leader of a fundamentalist group. He is also a very bad man.  
18 He ought to be in jail a lot."

19 Q Okay. I'll stop you there. Now, can you tell us,  
20 based on the survey, what have you concluded about whether or  
21 not a fair and impartial jury can be impaneled or whether  
22 there is a reasonable likely -- let me ask this question. Do  
23 you have an opinion about whether there is a reasonable  
24 likelihood that impartial jurors can not be picked from  
25 Washington County?



1           A       Say it again. I think I got a double negative in  
2 there.

3           Q       What's your opinion about the likelihood of picking  
4 impartial jurors in Washington County versus Salt Lake  
5 County?

6           **THE COURT:** Your objection, counsel?

7           **MR. BELNAP:** Your Honor, the witness has already  
8 testified that she doesn't know what goes on in voir dire,  
9 that she is not an attorney, that she doesn't, her polling  
10 data didn't even ask the question whether or not a juror  
11 could set aside the preconceived notion. So, there is no  
12 foundation for her to even answer that question. It's a  
13 legal conclusion for the court.

14          **THE COURT:** Well, it is a legal conclusion for the  
15 court, counsel. But the rules of evidence that we presently  
16 have now allow an expert witness to opine on a legal question  
17 for the court, the final ultimate question for the court.

18          Let me give you a chance to speak to that other than  
19 what I have said. Mr. Bugden, do you resist the objection?

20          **MR. BUGDEN:** Well, yeah. The whole point of the  
21 survey was to put before you their opinions. Now, maybe Mr.  
22 Belnap's cross-examination or your own cross-examination of  
23 or examination of the witness will ultimately lead you to  
24 conclude that the survey's not something that you are going  
25 to rely on. But she certainly should be entitled to express

1 her opinion, as should Dr. Jones.

2           **THE COURT:** Not only should she be, the record  
3 requires that the court make that record so that I perfect  
4 the record, so that this witness' opinion can be had so that  
5 if I choose to disregard it or directly grant a motion to  
6 strike, I can be corrected by those higher up on the judicial  
7 food chain. And so, your objection, counsel, is taken under  
8 advisement, not ruled upon. And I am going to allow this  
9 witness to opine, first, to protect the record, and next, to  
10 give me an opportunity to plumb the experience that we have  
11 here on the witness stand.

12           What is your opinion, ma'am?

13           **THE WITNESS:** Okay. Hit me with the question again.

14           **THE COURT:** Try once more, counsel.

15 **BY MR. BUGDEN:**

16           Q     Okay. I'm going to walk through baby steps. Is  
17 there a clear difference in the opinions about guilt or  
18 innocence between Washington County based on your survey?  
19 Obviously, all these questions just prefaces based on the  
20 survey. Is there a clear difference in the opinions about  
21 guilt or innocence between Washington County and Salt Lake  
22 County?

23           A     Yes. Especially in the definite category.

24           Q     And do you have an opinion based on the survey  
25 results whether a fair and impartial jury is likely to be

1 impaneled in Washington County?

2 A Given the information from the survey, it would be  
3 more difficult to get that, based on the number of on --  
4 where they had received information on the question, the one  
5 question, and by their already differences in guilt or  
6 innocence. It would be easier in Salt Lake County.

7 Q So, do you believe that there's a reasonable  
8 likelihood that impartial jurors will not be found in  
9 Washington County?

10 A Yes. Yes, I do. I think it would be much, much more  
11 difficult in this county.

12 MR. BUGDEN: Thank you.

13 THE COURT: All right. Who is going to cross? Mr.  
14 Belnap? You may take the witness on cross.

15 MR. BELNAP: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. BELNAP:

18 Q Miss Meppen, I would like to start by asking you some  
19 questions about the tolerance of error. And we were talking  
20 about Obama and Clinton earlier. Just to help me understand  
21 tolerance of error, let's suppose that Obama has 44 and  
22 Clinton has 47 in a poll that has a plus or minus 3 percent.  
23 Does that mean, that, for example, there is a range of  
24 possibilities that could range from 47 to 41 for Obama? Is  
25 that what that means?

1 A Yes. Basically, it is.

2 Q So, Clinton would have a range of 50 to 44; is that  
3 right?

4 A Yes.

5 Q Would that then mean that since given the polling  
6 data with a margin of error of plus or minus 3 percent they  
7 might be tied, right? They may actually be tied because it's  
8 within this range; is that correct?

9 A Yes. That's correct. Now, one of the things, and  
10 it's a little caveat, and it's not used in the research that  
11 a public sees very often. But if the -- if -- we are basing  
12 all of those plus or minuses on plus or minus, basically, a  
13 split opinion. You know, so if an opinion is like you said,  
14 a perfect example, 44 to 47, those are very, very close. The  
15 further away they get, that error actually becomes lower  
16 because the chance of that happening just randomly, you know,  
17 is less. So, if you've got 30 to 70 percent, we are more  
18 confident in the accuracy of those numbers. So, most surveys  
19 that you see, you are absolutely correct. We use the basic  
20 error basing things on 50 percent yes, 50 percent no.

21 Q Okay. Well, in this case, the tolerance of error is  
22 plus or minus 6.9 percent, right?

23 A Yes.

24 Q Here is question 16. Question 16 was the question of  
25 guilt; is that right? So, I'm going to put this here so that

1 you and I can see it, because I want it right up here, Salt  
2 Lake County, combining those who reported that they had a  
3 preconceived view as to guilt, definitely or probably. How  
4 many in Salt Lake County responded that they had a  
5 preconceived notion of guilt?

6 A Um, you mean putting them together?

7 Q Putting them together.

8 A 75 percent putting them together.

9 Q And that would be -- that's Salt Lake County.

10 Thirty-nine and 39 is?

11 A I'm sorry, yes. I was doing it backwards.

12 Thirty-nine and 39 is 78.

13 Q Okay. And Washington County?

14 A That's your 75.

15 Q Seventy-five. Okay. Now, it says that -- your  
16 report says that there is a plus or minus 6.9 percent  
17 tolerance of error. Does that mean, once again, that there  
18 is a pinch of range of which that could be accurate, that  
19 would be accurately reporting? So, you can, for ease of  
20 math, you can add seven and get 85, subtract seven and get  
21 71, add seven and get 82, subtract seven and get -- whatever  
22 the math is -- 68?

23 A Yes. Essentially, that is the way.

24 Q So, would you say that between Salt Lake County and  
25 Washington County, you hear political commentators say it's

1 within the margin of error, would you say that Salt Lake  
2 County and Washington County are within the margin of error,  
3 the tolerance of error on this ultimate question?

4 A Adding those together, yes, in terms of guilt  
5 overall.

6 Q Right.

7 A In terms of the individual when they are separated  
8 out, there are the differences.

9 Q Okay. And your answer is --

10 A If you are adding them together, yes.

11 Q Your answer is that Salt Lake County and Washington  
12 County, the poll results overall are, they are within the  
13 tolerance of error?

14 A Overall guilt, yes.

15 Q Yes. And, in fact, Washington County, in your  
16 survey, respondents came in even lower than Salt Lake County  
17 in terms of overall guilt?

18 A In terms of -- if you add the definitely and probably  
19 together?

20 Q That's correct. So, conversely, those with no  
21 opinion or not guilty, Salt Lake County, how many people had  
22 no, had not yet formed an opinion in Salt Lake County?

23 A Um, 1 percent definitely. And 1 percent probably not  
24 guilty.

25 Q How many people had no opinion?

1 A 20 percent -- are you talking about Salt Lake County  
2 still?

3 Q Correct.

4 A 20 percent.

5 Q How many in Washington County have yet to form an  
6 opinion?

7 A 22 percent.

8 Q So, the number of people responding to your survey,  
9 the percentage of people responding to your survey in  
10 Washington County who have not yet formed an opinion  
11 regarding guilt is actually higher than in Salt Lake County?

12 A Yes, of the don't knows only.

13 Q Of those who have not formed an opinion regarding  
14 guilt?

15 A Okay. Yes.

16 Q Now, turning to question 13. Question 13 is the  
17 question that asked where people got their information  
18 regarding the case, right?

19 A That's correct. What were sources of information  
20 about the case.

21 Q And, in Washington County, 30 percent reported that  
22 they got their information from neighbors or friends; is that  
23 correct?

24 A That's correct.

25 Q Whereas, in Salt Lake County, 12 percent. Does the

1 tolerance of error figure apply to those results as well?

2 A The tolerance of error might be a slight degree  
3 higher because we have -- although the numbers change so  
4 little in terms of tolerated error, just because we  
5 eliminated a few people who weren't familiar with the case.  
6 But, basically, they do apply.

7 Q So, if you take 30 in Salt Lake and subtract seven,  
8 you'll be at 23. If you take 12 in Washington County and add  
9 seven, you would be at 19, with a four percentage point  
10 difference which isn't really that great, is it?

11 A You know what? You lost me on where you got those  
12 figures. So, hit me again. I got the 30.

13 **THE COURT:** Well, counsel, we can do those in our  
14 head. Put the chart back up.

15 **MR. BELNAP:** The court's followed my point, I think.

16 **THE COURT:** Well, I have, counsel. And, frankly,  
17 this argument is argumentative. It really is working with  
18 the numbers. That I can see the numbers myself and have done  
19 the analysis in my head over the last two or three weeks,  
20 ever since I have had this.

21 **MR. BELNAP:** Okay. Thank you, Your Honor.

22 **THE COURT:** Counsel, anything else specifically you  
23 would like to get with Miss Meppen?

24 **BY MR. BELNAP:**

25 Q In terms of the survey methodology, I think you



1 reported that the average interview time was six minutes; is  
2 that correct? And there were 16 questions covered during  
3 that time frame?

4 A Sixteen. Then there were a few demographic questions  
5 as well.

6 Q Were any questions besides those listed on the script  
7 standard of the survey respondents?

8 A The script -- there were the demographic questions  
9 that do not appear on the script. And that's it.

10 Q So, when you get to question number 16 regarding  
11 guilt or innocence, your interview team would not vary from  
12 the language of that question, for example?

13 A No, they would not.

14 **MR. BELNAP:** Thank you, Your Honor.

15 **THE COURT:** Miss Meppen, amazingly enough, I get the  
16 last say. If I look at question 16, and if I look at your  
17 combined analysis between question ten and question 16, it  
18 would appear to me that the ability to get people who have  
19 not formed or expressed any opinion as to innocence or guilt  
20 in this case, would be at least statistically an easier job  
21 in Salt Lake County than it would be here in Washington  
22 County, is that basically the conclusion?

23 **THE WITNESS:** Yes. That's correct.

24 **THE COURT:** All right. With a given sample of "X"  
25 number of potential jurors drawn from the two counties,

1 getting those who have expressed no opinion as to innocence  
2 or guilt, I would in all likelihood, again, within the margin  
3 of error of the study, have more jurors in Salt Lake County  
4 without opinions as they walked into the courtroom as opposed  
5 to in Washington County by a difference of perhaps five or  
6 6 percent?

7 **THE WITNESS:** Um, if you are talking about the  
8 question of guilt or innocence and the "don't knows", the  
9 "don't knows"s only, the don't knows are very consistent  
10 across all three of the counties.

11 **THE COURT:** So, the "don't knows", if I used just  
12 that universal respondents as the "don't knows" as my ideal  
13 jurors, I would get roughly the same call throughout the  
14 state?

15 **THE WITNESS:** Throughout those three counties.

16 **THE COURT:** Those three counties, yeah. We can't ask  
17 you to tell us anything about --

18 **THE WITNESS:** Yeah, don't --

19 **THE COURT:** We didn't go to Tooele. Now, if it is my  
20 job as a trial judge, which it is to make sure that the  
21 jurors that I finally give to counsel to take peremptory  
22 challenges and knock off half of them so that the remaining  
23 jurors are seated to hear the case, if I take my job as to  
24 pick out those who have had the least inclination, at least,  
25 to express an opinion, and after questioning them, determine

1 that they will be the final panel from which our eight  
2 sitting jurors will be called, and if I get rid of all those  
3 who responded in the affirmative for guilt, I am at a dead  
4 heat between the three counties?

5 **THE WITNESS:** Based upon the survey.

6 **THE COURT:** Based upon the information that you have  
7 given me. Have you ever had a chance to sit in on a specific  
8 jury selection process and see the way that operates?

9 **THE WITNESS:** No, I have not. The best I have done  
10 is on TV.

11 **THE COURT:** Oh, dear.

12 **THE WITNESS:** Yeah. So, that's pretty scary. I am  
13 familiar with the process, but I have not sat in on a jury  
14 selection.

15 **THE COURT:** Not had a chance to watch that operation.

16 **THE WITNESS:** I have not.

17 **THE COURT:** All right. Based upon your experience,  
18 and from what you have told me, I'm going to give you a  
19 conclusion that I think I'm drawing, and I want you to  
20 comment on it to see if I have accuracy in my conclusion. It  
21 would be more hazardous, in picking a fair and impartial  
22 juror, if I were to take a person who has definitely said  
23 that Mr. Jeffs is guilty, and try to talk him out of it so  
24 that he would qualify as a juror than it would be if I took  
25 that person who has expressed a definite opinion and just

1 excused them and gone on to the next body; is that correct?

2 I could probably find more hazard in finding a fair juror in

3 that circumstance if I tried to rehabilitate a definite

4 opinion?

5 **THE WITNESS:** Our experience, my experience has been  
6 that those people that hold a definite opinion keep it longer  
7 and it is a much stronger opinion. It would be difficult to  
8 change that.

9 **THE COURT:** And it's a harder sell to move them from  
10 that opinion?

11 **THE WITNESS:** That is correct.

12 **THE COURT:** If they are Burger King customers, you  
13 are going to have a harder time getting them to go to  
14 McDonald's?

15 **THE WITNESS:** Good point.

16 **THE COURT:** Now, Mr. Bugden, any redirect, counsel?

17 **MR. BUGDEN:** Just a couple questions.

18 REDIRECT EXAMINATION

19 **BY MR. BUGDEN:**

20 Q First, from your perspective as an expert in the  
21 field, is it a correct analysis to apply the margin of error  
22 or the tolerated error in one direction? So, back to the  
23 neighbor question. The source of information is either  
24 neighbor or friend. And in Washington County 30 percent had  
25 learned by neighbor or friend. And then Mr. Belnap said,

1 well, let's apply the tolerated error and subtract it. So,  
2 let's go in a negative direction to come up with 23.

3 A Um-hmm.

4 Q Then with Salt Lake County, where only 12 percent had  
5 received their information by rumor, gossip and hearsay,  
6 if -- with that analysis, but here we want to add the  
7 7 percent, add the tolerated error to come up with  
8 19 percent, does it work to subtract it from one statistical  
9 sample but to add it to another? Is that the way -- is that  
10 fair? Does the tolerated error only go in one direction in  
11 one county but go in another direction in another county?

12 A No. What it shows is the two potential extremes.  
13 So, it's not that it could never happen. It's saying the  
14 likelihood, if you deal with numbers and you deal with  
15 sampling and error, we stay pretty consistent in our plus or  
16 minus, whatever our plus or minus is. We are pretty close.  
17 And it doesn't vary a lot. It says, you know, in the worst  
18 case scenarios you are on the outsides. You are on the  
19 extremes of that window. There is the possibility that that  
20 happens. But it's only a possibility. We know that our  
21 responses are somewhere in this range. And so, the chance of  
22 one response being here and one response being there, it  
23 could happen. It's less likely than the responses fitting  
24 somewhere within the range. That's -- that's a research --  
25 you know, we see that all the time, the range. So...

1 Q Then, when you obtain the results, in fact, you and I  
2 discussed that if you add the "definite guilties" and the  
3 "probably guilties" in the Salt Lake County category, or  
4 Washington County or Iron County, you come up with statistics  
5 that are very similar. Salt Lake was 78 percent, Washington  
6 was 75 percent. But am I correct that you believe that it's  
7 unfair, that it's inaccurate to add those two categories  
8 because of the difference between the "definite" group that  
9 won't change an opinion and the "probably" group that are  
10 still capable of changing an opinion?

11 A Um, it is very, very common for us to put things in a  
12 scale. Because those people, on a one to five scale, or a  
13 one to four scale, a one to ten scale, whatever it is, those  
14 people that are in the middle that haven't selected a more  
15 extreme response are more likely to show movement than the  
16 extreme responses. We -- I'm trying to think of cases. It's  
17 rare for us to ask a lot of questions where they are opinion  
18 questions in definite responses like yes and no, because, you  
19 know, we don't -- just like a question like that, yeah.

20 Q I need to interrupt you because I'm not sure that you  
21 are understanding my question or that I'm asking the question  
22 clearly. Do you think it's a fair snapshot of Salt Lake  
23 County to say 78 percent think he's definitely or probably  
24 guilty and Washington would say 75 percent, and say he's  
25 definitely or probably guilty and, therefore, Salt Lake and

1 Washington County are very, very similar?

2 A Oh, I see what you are saying.

3 Q That's Mr. Belnap's point. Do you think they are  
4 very, very similar?

5 A I see what you are saying. We treat, we look at  
6 definitelies and probablies as different. Because  
7 definitelies are people whose opinion generally does not  
8 move. They are more definite and they will hold that opinion  
9 stronger. If we ask somebody, are you going to vote for this  
10 person, definitely, probably, probably not, definitely not,  
11 those people who say they are definitely or generally hold  
12 that definite opinion, unless something major happens with  
13 their candidate, they will definitely vote for him. Where  
14 the people that are in middle ground, they are the people  
15 that we, in all research, we see movement. We see them shift  
16 based on different things to, you know, to the other side  
17 even. They might go to, from a strongly feel some way -- I  
18 mean, as somewhat feel favor, something to a somewhat oppose  
19 something. So, there is more movement in those middle  
20 grounds. Does that answer the question?

21 **MR. BUGDEN:** I'm not sure. But that's all I have.

22 **THE COURT:** It answers it for me. Miss Meppen, thank  
23 you very much. You may step down. Your next witness,  
24 counsel?

25 **MR. BUGDEN:** Dan Jones.

1           **THE COURT:** Mr. Jones. Dr. Jones, would you please  
2 come forward and be sworn. If you will face my clerk and  
3 raise your right hand, sir.

4                                 DR. DAN JONES,

5           called by DEFENDANT, having been duly  
6 sworn, was examined and testifies as follows:

7           **THE COURT:** Thank you. Please have a seat, doctor.

8           Counsel, let us put something on the record that  
9 everyone in judiciary would know about, my colleagues on any  
10 reviewing courts would also know, but we need to put it on  
11 the record anyway. Dr. Jones is the father of the former  
12 district court administrator for the state of Utah, Mark  
13 Jones, now the U.S. District Court Clerk for the District of  
14 Utah. And I shall resent my federal colleagues for a long  
15 time over that, but that has nothing to do with it. And, as  
16 a consequence, I am familiar with Dr. Jones from that  
17 standpoint. There is no recusal issue here whatsoever. I  
18 have had the privilege of listening to Dr. Jones in judicial  
19 conferences tell us about his work on one occasion. But out  
20 of an abundance of caution, there is that de minimis  
21 relationship, counsel. Go ahead.

22  
23  
24                                 DIRECT EXAMINATION  
25



1 BY MR. BUGDEN:

2 Q Can you tell us what degrees you hold?

3 A I have a B.A. from Idaho State University, in 1956.  
4 I have an M. A. from University of Utah in 1968. I have --  
5 excuse me, in '62. Then I have a Ph.D. in 1968 from  
6 University of Utah.

7 Q And is that in political science or survey?

8 A Political science. And, also, I studied survey  
9 research.

10 Q And, Dr. Jones, how many surveys do you think you  
11 have conducted over the years?

12 A Over 3000.

13 Q And have you been involved, has your organization  
14 been involved in conducting surveys trying to measure  
15 opinions about guilt or innocence of defendants in other  
16 cases prior to this Warren Jeffs survey?

17 A Five or six come to mind.

18 Q Okay. Before I ask you to discuss the results of the  
19 survey, I would like to ask you a question about in your  
20 prior experience in dealing with venue changes, where you  
21 have been involved in conducting surveys in some of these  
22 criminal cases, have you encountered difficulties asking a  
23 question like, can you set your personal opinions aside and  
24 be fair to this defendant?

25 A Well, I have to go back to a previous example. One

1 of the most difficult things that we have in survey research  
2 is to determine, does opinion lead to behavior. The many  
3 people will tell us they are going to vote. And they do not.  
4 For us to be accurate and to make predictions on election eve  
5 and so forth, we must be able to determine if opinion does  
6 lead to behavior. And many times individuals will tell us  
7 that they intend to vote or are going to, and they do not.

8           And I think Miss Meppen covered it very well, that  
9 there are those who will say that in terms of patriotism, of  
10 the things that they need to do to be a good citizen. Then  
11 why is it that 85 percent will tell us they are going to vote  
12 and 40 percent turn out? We find that in many cases in  
13 asking questions they will tell you what they think you want  
14 to hear rather than the intent of their actual behavior.

15       Q     So, from your experience, would asking a question in  
16 a survey like the Warren Jeffs case, after you found out what  
17 opinion an individual held about guilt or innocence, or after  
18 you learned what associations they had with Mr. Jeffs, would  
19 it be difficult to ask a follow-up question like, can you set  
20 those personal opinions aside and treat Mr. Jeffs fairly?  
21 Would that be a difficult question to ask?

22       A     Not only difficult, but we have done it before. And  
23 we have discarded that question because we have found that  
24 there is no relative confidence that individuals will be able  
25 to do that.

1 Q Or that the answer is a reliable answer, I guess is  
2 what you are saying?

3 A That's right.

4 Q Now, I would like to ask you if you can explain to  
5 the judge the conclusions that you reached from the survey  
6 results, from your survey results in this case.

7 A Well, in all the cases that we have been involved  
8 with, you have to take different countings, if you are going  
9 get a change of venue, to find out how much knowledge people  
10 have about a particular case, if they have already had a  
11 predetermined guilt or innocence in regards to the  
12 individuals. And you only do these change of venue cases  
13 where there are very, very important high profile cases. Can  
14 you get a fair trial? And we find that people are very  
15 likely to respond to our surveys. But, at the same time,  
16 that we must find out what they need to know, but then also,  
17 can an individual get a particular fair trial in one county  
18 versus another county? And every single case we did, we  
19 found a difference.

20 I believe that Salt Lake County is the county in  
21 which this defendant can get a more fair trial than in  
22 Washington County or in Iron County. The counties that where  
23 individuals have had to talk and visit and gossip and maybe  
24 not have all the facts. And it spreads tremendously. Look,  
25 675,000 people in Salt Lake County. And look at how much

1 smaller Washington County.

2 **THE COURT:** How large is Washington County, Mr.  
3 Jones?

4 **THE WITNESS:** All right. In Washington County, you  
5 have the results of about 125,000 individuals that will give  
6 you, that you can choose from.

7 **THE COURT:** Mr. Jones, the state in their brief --

8 **THE WITNESS:** Here, I have them right here.  
9 Washington County, 85,000. Salt Lake County 676,000. Iron  
10 County, 27,000.

11 **THE COURT:** From what year is that, sir?

12 **THE WITNESS:** This would be the year of 2000.

13 **THE COURT:** All right. It's now 2007, have you  
14 looked at the most recent data from that?

15 **THE WITNESS:** Yes. Salt Lake County has a million  
16 now. Yeah, right now this past year, 1 million.

17 **THE COURT:** All right. In 2005 --

18 **THE WITNESS:** Now, this is 18 and above. Eighteen  
19 and above.

20 **THE COURT:** Okay. Let's go to total population for  
21 Washington County in 2005. The state has given me  
22 information from the American Community Survey that says  
23 Washington County had 117,385 in 2005. Salt Lake County had  
24 93 -- 933,416. Now, there is a fairly substantial difference  
25 in those kinds of numbers, sir. I have also received

1 information that because Washington County grows so much more  
2 quickly than Salt Lake County does, in a percentage basis,  
3 not per capita. Per capita, I don't know how it measures  
4 out, that there are more people coming to Washington County  
5 from outside the state of Utah that are found in Salt Lake  
6 County.

7 **THE WITNESS:** I saw that percentage. And it's only  
8 4 percent difference.

9 **THE COURT:** Um-hmm.

10 **THE WITNESS:** That's not very significant. When you  
11 look -- now, what you are talking about, native born versus  
12 those who are what we called transplants.

13 **THE COURT:** Well, I'm a transplant. I was born in  
14 Arizona. So, I guess it doesn't really matter much, does it?

15 **THE WITNESS:** And there is no insult intended. But  
16 you also will find that it was only 4 percent difference  
17 between Washington County and Salt Lake County.

18 **THE COURT:** With Washington County ahead in the  
19 percentage.

20 **THE WITNESS:** Yes. Washington County was ahead, that  
21 is right.

22 **THE COURT:** Doctor, if the court were to take this  
23 data that you have given us, and use your data in the jury  
24 selection process, and totally throw out the two opinion  
25 levels of either definitely guilty or probably guilty, just

1 take every juror that responded to that on a questionnaire  
2 handed out by the court under oath, under controlled  
3 conditions where the questionnaire is filled out in the  
4 presence of the court, and completely eliminate those  
5 individuals, and rely upon solely those persons who have  
6 expressed no opinion, would your opinion change?

7 **THE WITNESS:** No. Salt Lake by sheer numbers. Look  
8 at the tremendous amount of numbers that you have in Salt  
9 Lake County versus Washington County.

10 **THE COURT:** If I was in Salt Lake County, I would  
11 only put eight people on a jury there too, Mr. Jones.

12 **THE WITNESS:** That's true. But you would have a much  
13 higher pool to draw from.

14 **THE COURT:** I can only pull in about six to 800  
15 jurors in any given county without starting to empty out the  
16 homes and schools.

17 **THE WITNESS:** But, again, the same of the six or 700  
18 people you have to draw from, you have less chance of them  
19 having an opinion in Salt Lake than you do in Washington  
20 County.

21 **THE COURT:** And I am throwing out those that have an  
22 opinion in both counties. What's the difference?

23 **THE WITNESS:** That's what I am saying. There is  
24 still a significant difference in Salt Lake County.

25 **THE COURT:** So, the people with no opinion in Salt

1 Lake County are different than the people with no opinion in  
2 Washington County?

3 **THE WITNESS:** No. But just in some sheer numbers to  
4 draw from.

5 **THE COURT:** Oh, I don't worry about numbers because I  
6 have the checkbook of the state of Utah to work with.

7 **THE WITNESS:** Okay. My answer back to you then is,  
8 there is no real difference in "don't know." We assume that.  
9 We assume that they don't know. They would have much more of  
10 a chance in Washington County because of the dialogue between  
11 the individuals, the gossip and where they go to their work  
12 and they go to their church and they go to various sundry  
13 places, talk about it is a daily conversation. Not in Salt  
14 Lake County. You got too much to compete with of the things  
15 that are going on there.

16 **THE COURT:** So, nothing else is happening in  
17 Washington County?

18 **THE WITNESS:** Well, as Mayor Anderson. But,  
19 anyway --

20 **BY MR. BUGDEN:**

21 Q So, I take it -- I'm sorry.

22 **THE COURT:** Go ahead, counsel.

23 **BY MR. BUGDEN:**

24 Q So, I take it, it is your opinion that a fair and  
25 impartial jury can not be seated in Washington County?

1           A       It is my opinion it is very unlikely that you could  
2 get an impartial jury for such an important case in  
3 Washington County.

4           **THE COURT:** Dr. Jones, have you ever had the  
5 opportunity to sit in on jury selection?

6           **THE WITNESS:** One time.

7           **THE COURT:** How long ago?

8           **THE WITNESS:** Oh, I guess in the last five years.

9           **THE COURT:** Okay. Where was it?

10          **THE WITNESS:** Salt Lake.

11          **THE COURT:** What was the case?

12          **THE WITNESS:** I don't remember the name of the case.

13          **THE COURT:** Was it a high profile criminal case like  
14 this one?

15          **THE WITNESS:** No. I testified in a high profile  
16 criminal case, though.

17          **THE COURT:** Okay. What was the most recent high  
18 profile, and I'll use your definition, however you want to  
19 call it, high profile criminal case that you have done jury  
20 research on apart from this one?

21          **THE WITNESS:** No. I did a survey on a change of  
22 venue, that was the entire case.

23          **THE COURT:** And the most recent?

24          **THE WITNESS:** Well, it would have been about eight  
25 years ago.



1           **THE COURT:** And which case was that, do you recall?

2           **THE WITNESS:** It was the case involving up in Summit  
3 County of a truck driver that was killed by a hitchhiker.  
4 And they tried to get a change of venue case.

5           **THE COURT:** Okay. Go ahead, counsel.

6 **BY MR. BUGDEN:**

7           Q     I take it we can agree that in the state of Utah  
8 there are many people that disapprove of polygamy; is that  
9 right?

10          A     Yes. 70 percent disapprove.

11          Q     And why is it different, the attitudes that people  
12 might have towards the polygamy? Why is that different in  
13 Washington County than in Salt Lake County?

14          A     Well, I think in Washington County, it is more  
15 salient because of the makeup of religion in Washington  
16 County compared to Salt Lake. Salt Lake County is about  
17 58 percent LDS. Washington County is much higher than that.  
18 And it becomes a very salient issue between the LDS versus  
19 the FLDS.

20          **THE COURT:** Mr. Jones, what is your recent survey  
21 data with respect to LDS versus non-LDS in Washington County?  
22 Do you have any?

23          **THE WITNESS:** Yes. If I looked in the Washington  
24 County, Washington County would be close to 70 percent LDS.

25          **THE COURT:** How old is that information, sir?

1           **THE WITNESS:** Oh, that's very recent.

2           **THE COURT:** For some of us, very recent is the last  
3 three weeks. And for some of us, very recent is the last  
4 three years.

5           **THE WITNESS:** Within the last six months.

6           **THE COURT:** Within the last six months?

7           **THE WITNESS:** Yeah.

8           **THE COURT:** All right. Now, with respect to that bit  
9 of information, a 22 percent difference in predominant  
10 religion between the two counties, have you done any research  
11 to find out if those of the LDS faith as opposed to those of  
12 other faiths have an opinion on polygamy?

13           **THE WITNESS:** Yes. The LDS is much more salient.

14           **THE COURT:** Define your word "salient." What does  
15 that mean?

16           **THE WITNESS:** Salient is upfront, have stronger  
17 opinions, more knowledgeable about it.

18           **THE COURT:** All right. Now, have you done similar  
19 surveys with a degree of response with respect to the issue  
20 of polygamy?

21           **THE WITNESS:** Yes. I have done within the last year  
22 research about polygamy.

23           **THE COURT:** Here in Washington County?

24           **THE WITNESS:** Yes, in Washington. I would not have  
25 had a large enough sample that I would have a confidence

1 level to play that error game that was played a little while  
2 ago.

3 **THE COURT:** For Washington County, how big a sample  
4 did you have?

5 **THE WITNESS:** Well, Washington County, you would take  
6 around 30 interviews out of the 400 at best. At best.

7 **THE COURT:** So, you did 400 interviews statewide, and  
8 at best you would have 30 in Washington County?

9 **THE WITNESS:** At best.

10 **THE COURT:** At best. What's your error rate there  
11 with Washington County's population of around 100,000 people?

12 **THE WITNESS:** That would be humongous.

13 **THE COURT:** Very large error?

14 **THE WITNESS:** Yes.

15 **THE COURT:** So, you don't have a lot of confidence in  
16 that information?

17 **THE WITNESS:** No, I don't.

18 **THE COURT:** Okay. Counsel.

19 **THE WITNESS:** Now, to be able to make that  
20 conclusion --

21 **THE COURT:** Dr. Jones, there is not a question  
22 pending. Mr. Bugden.

23 **BY MR. BUGDEN:**

24 Q Does it make a difference in your mind, in your  
25 professional opinion that the FLDS community that practices

1 polygamy is right in the backyard, the Hildale and Colorado  
2 City are right in the backyard of Washington County, so to  
3 speak, as it relates to picking a fair and impartial jury  
4 from this county?

5 A Well, it is known that they are well known for having  
6 large polygamist populations in those areas that you  
7 mentioned. It would be more difficult, yes.

8 **MR. BUGDEN:** That's all I have.

9 **THE COURT:** Mr. Bugden, let me give you about ten  
10 minutes worth before we take a break. I'm sorry. Mr.  
11 Belnap.

12 **MR. BELNAP:** Okay.

13 **THE COURT:** You gentlemen need to look a lot  
14 different. My apologies, counsel. Go right ahead.

15 **MR. BUGDEN:** I'm sure it's a compliment to both of  
16 us.

17 **MR. BELNAP:** That's the way I take it.

18 CROSS-EXAMINATION

19 **BY MR. BELNAP:**

20 Q Dr. Jones, in the survey your firm conducted for Mr.  
21 Bugden, we were -- it solicited data regarding a group of  
22 people's opinion; isn't that right?

23 A You would be a representative sample of a universe of  
24 people's opinion. I would not use the word group, no.

25 Q Okay. So, if we sent one of these bailiffs out to

1 grab a person off the street, your survey would not have any  
2 predictive value with regard to any specific individual,  
3 would it?

4 A I don't know why it should.

5 Q To really find out anybody's particular views or  
6 prejudices, we would have to ask that particular person?

7 A That's true.

8 Q And we would have to go through that exercise whether  
9 we were in Salt Lake or Washington County?

10 A Well, we ask the same people in Washington County and  
11 Salt Lake County. And this is very, very significant, a  
12 important point.

13 Q Dr. Jones, we would have to go through that same  
14 exercise in Salt Lake County or Washington County, wouldn't  
15 we?

16 A Yes.

17 Q Okay. Thank you. Now, in Salt Lake County, you  
18 sampled 206 residents; is that correct?

19 A That's correct.

20 Q And approximately 22 percent of them expressed an  
21 opinion, answered that they don't know when asked if they had  
22 an opinion about guilt or innocence; is that right?

23 A That's true.

24 Q So, if we were to move all of us up to Salt Lake  
25 City, change venue, and the court were to call in 200

1 randomly selected individuals to serve on the jury pool,  
2 would we expect that about 22 percent of them would come in  
3 with no opinion?

4 A That could be correct.

5 Q So, suppose we stayed here in Washington County.  
6 Your survey results said that 20 percent of the people in --  
7 22 percent of the people in Washington County expressed no  
8 opinion; is that correct?

9 A That's correct.

10 Q So, if the court were to call in approximately 200  
11 people here in Washington County, wouldn't you expect the  
12 results would be approximately the same?

13 A No. Because you have so many more in Salt Lake  
14 County.

15 **THE COURT:** We are only taking 200 people in both  
16 locations, sir.

17 **THE WITNESS:** Yeah. But your universe is so much  
18 larger to draw from.

19 **THE COURT:** You have lost me there, Dr. Jones.

20 **THE WITNESS:** Well, I don't mean to lose you.

21 **THE COURT:** If I take -- bear with me, trust me on  
22 this. I know where I need to go. You told me that here in  
23 Washington County I can get 22 percent of any group of  
24 qualified jurors. And your survey was looking for people who  
25 could qualify as jurors over the age of 18 years, able to

1 speak the English language, citizens of the United States.  
2 That if I took 200 people here in Washington County, if I  
3 follow your figures specifically, I could get 44 who have not  
4 expressed opinion at all as to the innocence or guilt of Mr.  
5 Jeffs. That's right?

6 **THE WITNESS:** That's right.

7 **THE COURT:** If I go to Salt Lake County, and get 200  
8 people in Salt Lake County on the basis of the work that you  
9 have given us here, I can get 40, 20 percent, who have not  
10 expressed an opinion as to the innocence or the guilt of Mr.  
11 Jeffs, is that right, out of that 200 people that I get up  
12 there?

13 **THE WITNESS:** As your cases you are presenting, yeah.

14 **THE COURT:** That's the way we do juries, doctor.

15 **THE WITNESS:** But, may I ask you?

16 **THE COURT:** Please.

17 **THE WITNESS:** When you draw from that jury, do you  
18 mean to tell me you got the same chance in Washington County  
19 here as you do in Salt Lake with the numbers?

20 **THE COURT:** Doctor, if you want chance, we'll go down  
21 the road to Mesquite and play the odds there.

22 **THE WITNESS:** You would have to guide me to get me  
23 there.

24 **THE COURT:** Counsel could do an excellent job of  
25 that. No. My concern is this: I only deal with a finite

1 number of jurors when I send out a jury voir dire. When I  
2 send out for a jury panel, I only summon a given number in.  
3 I am not taking an entire survey in Salt Lake County and  
4 trying to determine what the county's opinion is going to be.  
5 I'm looking at a block of individuals who, based on your  
6 information, only a relatively small percentage have not  
7 expressed an opinion. Only 22 percent. That may be the only  
8 ones that out of that 200 supposed people that I have to work  
9 with. But, if I only rely on the numbers that you have given  
10 me, and I only have a block of 200 jurors, or 300 or 500, I  
11 can only expect 22 percent in Washington County and  
12 20 percent in Salt Lake County to walk into that courtroom  
13 with no opinion whatsoever as to Mr. Jeffs' innocence or  
14 guilt. Is that right?

15 **THE WITNESS:** Well, yes. But, you see, the pool in  
16 Salt Lake County is three to one over the pool in Washington  
17 County.

18 **THE COURT:** But my pool that I, my bucket that I dip  
19 into that pool only holds 200, 300, 400 in either county.

20 **THE WITNESS:** But where did you draw them from?

21 **THE COURT:** That county.

22 **THE WITNESS:** All right. But from the entire  
23 population in Washington County?

24 **THE COURT:** Yes, sir.

25 **THE WITNESS:** Okay. In the entire population of Salt



1 Lake County.

2 *THE COURT:* Yes, sir.

3 *THE WITNESS:* So, are you comparing apples with  
4 oranges because you have Washington County versus Salt Lake  
5 County, in sheer numbers?

6 *THE COURT:* You are telling me that your survey has  
7 no relevance at all to the information that you have  
8 presented me?

9 *THE WITNESS:* No, I'm not saying that.

10 *THE COURT:* You are telling me that Salt Lake County  
11 and Washington County are so different that the numbers that  
12 I see here do not carry any weight, sir?

13 *THE WITNESS:* I'm saying they carry weight in regards  
14 to opinion, total number of opinion undecided. But, still,  
15 you have a larger pool to draw from out of Salt Lake County  
16 and who have not talked about the case and do know nothing  
17 about it compared to the ones in Washington County. But, of  
18 course, I stick up for my data or I wouldn't have presented  
19 it.

20 *THE COURT:* Mr. Belnap, any other questions?

21 *MR. BELNAP:* No, Your Honor.

22 *THE COURT:* Mr. Bugden, anything?

23 *MR. BUGDEN:* No questions, judge.

24 *THE COURT:* Dr. Jones, thank you, sir. Counsel,  
25 let's take a ten minute recess and come back into session

1 about ten minutes to four.

2 (Whereupon, a brief recess was taken.)

3 **THE COURT:** Thank you, everyone. We are back on the  
4 record in State of Utah vs. Jeffs. The defendant is present  
5 together with counsel. And state's counsel is also here.

6 Counsel, we have had an opportunity to hear the  
7 witnesses from the defense on the motion to change venue.  
8 Let me make sure the record is clear. Mr. Belnap, does the  
9 state intend to call any witnesses, fact witnesses on this  
10 matter?

11 **MR. BELNAP:** No, Your Honor.

12 **THE COURT:** All right. Then, counsel, let me give  
13 you some guidance with respect to the court's review of this  
14 law that we must apply so you can focus your arguments on  
15 what I need to look at for a change of venue. Also, in terms  
16 of time, I'm going to give each of you 15 minutes to talk  
17 about what we have in front of us in view of the law. And in  
18 telling you about the law, talking with you about the law,  
19 I'm following this process: I'm using the most recent case  
20 that we have on change of venue, which is State vs. Stubbs,  
21 which I think is powerful guiding authority to the court,  
22 because it is a supreme court case. It is giving me  
23 reference to two prior supreme court cases and giving me  
24 guidance as well as giving defense counsel guidance  
25 specifically. It doesn't help the state that much in telling

1 the state what to do. But it does give defense counsel  
2 guidance in terms of what should be done after the court  
3 rules, if the court rules one way or another on this motion.

4 As I see Stubbs, I am required in today's hearing, at  
5 a bare minimum, to apply the State v. James factors, the four  
6 factors of State v. James in analyzing the evidence and the  
7 testimony that I have before me. And I am also required to  
8 look at that through the lens of Widdison, because the Stubbs  
9 case was a post-trial opinion, Widdison was a post-trial  
10 opinion, James was a pretrial motion for change of venue.  
11 And if I read Stubbs correctly, I have to look at them all  
12 together in terms of determining the important vital  
13 question. And that is whether or not this case can have a  
14 fair and impartial trial here in Washington County.

15 Now, I have pulled out my very own copies of the  
16 relevant cases. I spent some time with them last night. The  
17 James issues that I wanted counsel to spend some time on and  
18 then look at through the lens of Widdison, which is something  
19 that Stubbs told us we had to do, but it didn't tell us  
20 exactly how to do it. But the issues that we have --

21 **MR. BUGDEN:** I know all the James factors, judge.

22 **THE COURT:** You are aware of. I would like you to  
23 address the James factors as you see them in this case and  
24 address this general idea. Because if I have received  
25 anything from the evidence offered by the defense in this

1 case, it is that because of the James factors the process in  
2 jury selection, no matter which county we select a jury in,  
3 is going to have to be driven by the general idea that we  
4 look for individuals that we are not going to have to sell on  
5 a presumption of innocence, who walk in with a presumption of  
6 innocence.

7 **MR. BUGDEN:** In the voir dire process, none of us are  
8 going to rehabilitate jurors that begin to express an opinion  
9 that they have already formed an opinion.

10 **THE COURT:** That's the way I see the data. And,  
11 frankly, if we start out with 300 people here in Washington  
12 County, we might get 66 in Salt Lake County. We might get  
13 60. I expect those numbers to vary some from the purported  
14 issue here. But the basic bottom line is, we have to start  
15 with people who have expressed no opinion whatsoever and then  
16 work from there, and have to have eight jurors perhaps, three  
17 alternates, selected out of that panel. With that in mind,  
18 your time's running, Mr. Bugden. Tell me what you want.

19 **MR. BUGDEN:** Well, before my time is running, I need  
20 to ask you to give me more leeway than 15 minutes. This is a  
21 very important issue for the defendant. And I will speak  
22 fast. I intend to speak fast. And I will. But I don't  
23 think I can say it, what I want to say to you in 15 minutes  
24 in fairness to Mr. Jeffs.

25 **THE COURT:** I can listen really fast, counsel. Do

1 your best. Let's see where we go.

2 **MR. BUGDEN:** Okay. The starting point, before I talk  
3 about the James factors, Your Honor, is, you know, seating a  
4 fair and impartial jury. Lots of times trial lawyers  
5 overlook how important the jury selection process is. I  
6 tried over 200 jury trials. And always, the most tense  
7 moment in the trial is when you are waiting for the foreman  
8 or for the bailiff to walk the verdict over to the judge.  
9 And then it seems like oxygen is sucked out of the room.  
10 Then you hear the verdict read. And then if it happens to be  
11 not guilty as you are laying in bed that night, you may  
12 wonder, if you are defense counsel, why did we win this?  
13 What was the defining moment when we won this case? Was it a  
14 great cross-examination? Was it a great closing argument?  
15 And the answer that everyone overlooks is the jury selection  
16 is the most important moment in the trial. Picking that fair  
17 and impartial jury.

18 If you begin with jurors that aren't going to be fair  
19 and impartial, it doesn't matter about a withering  
20 cross-examination. It doesn't matter about a great closing  
21 argument. Ending up with fair and impartial jurors is the  
22 pivotal moment in the trial. And, as the case laws talked  
23 about, Your Honor, there are just sometimes that you do have  
24 to recognize that there's just only so much that you can  
25 expect jurors to do. The first thing, again, I want to

1 remind the court of is that in Shepherd vs. Maxwell, United  
2 States Supreme Court points out that reversals are merely  
3 palliatives. In other words, denying a change of venue  
4 motion, and then, on appeal, granting a new trial because the  
5 change of venue should have been granted, simply a  
6 palliative. And the beauty of the change of venue motion is,  
7 if the court will use change of venue motions, they can  
8 ensure for both the accused and for the state and for  
9 judicial economy, we can fix it before the mistake has been  
10 done. Changes of venue are one of the few times that we can  
11 cure the problem and not have to deal with the palliative of  
12 going up on appeal.

13 I also want to remind you, Your Honor, in the -- I  
14 don't think I cited this in my memorandum, but I just want to  
15 remind the court, you know, you have talked, you have  
16 suggested through your examination of witnesses, and the  
17 state oftentimes likes to talk about effective voir dire, you  
18 know, during the selection process where we try to ferret out  
19 people who really do have these opinions. And I'll just  
20 remind you that Utah Supreme Court said that in State vs.  
21 Ball, "The most characteristic feature of prejudice is its  
22 inability to recognize itself. It is unrealistic to expect  
23 any but the most sensitive and thoughtful jurors, frequently,  
24 those least likely to be biased, who have the personal  
25 insight, candor and openness to raise their hands and to

1 declare themselves biased." That's the Utah Supreme Court  
2 addressing the issue of can we really expect everyone to be  
3 honest, completely honest in the voir dire process.

4 Then I want to dovetail that, Your Honor, or  
5 piggyback that with State vs. James. And I know that you  
6 have read, in granting the change of venue motion, the court  
7 noted that, "Although, we had no doubt" -- I guess it was a  
8 death penalty case -- "Although, we have no doubt the 12  
9 persons could be found who could honestly promise to set  
10 aside any prejudicial information which they had heard and  
11 any preconceived notions which they had formed, there are  
12 limits to what should reasonably be asked and be expected of  
13 prospective jurors who have been exposed to events  
14 surrounding the alleged crime."

15 In this case, I'm going talk about the four James  
16 factors. But, in this case, at the end of the day, when we  
17 talk about four factors talked about in James or Widdison  
18 analysis, with all due respect, I think that those, Stubbs  
19 and Widdison, are post-conviction. You know, that's after  
20 the facts. I think James is still the touchstone. I think  
21 that's the trigger.

22 **THE COURT:** Well, counsel, I think you are probably  
23 right. But Stubbs uses language that says I got to look at  
24 everything. And if you can tell me how that makes a  
25 difference, I would sure like to know. I still think James

1 is the most important one.

2           **MR. BUGDEN:** Well, James is what I am going to talk  
3 about. So, I don't think it matters. So, the first factor,  
4 of course, as you know, is the standing of the alleged victim  
5 compared with the standing of Mr. Jeffs. In James, of  
6 course, the court was very, very troubled by the defendant's  
7 standing because of his unique lifestyle that tended to  
8 depict him as someone different from the rest of the  
9 residents of Cache County. In this case, Mr. Jeffs clearly  
10 stands out himself. He is the prominent, if not the  
11 notorious, leader of the FLDS Church. One article in The  
12 Spectrum, and we'll be talking about The Spectrum as it  
13 relates to what's different in Washington County than Salt  
14 Lake County, that's ultimately our question, okay. But --  
15 so, I am going to be talking about The Spectrum repeatedly in  
16 the next 15 plus minutes.

17           One article in The Spectrum defined him as the most  
18 vilified polygamist since Joseph Smith. The residents of the  
19 FLDS Church residing in Hildale and Colorado City are in  
20 Washington County's backyard, judge. And the religious  
21 tradition of the FLDS Church certainly includes, as we know,  
22 arranged marriages and polygamy. As the prophet of this  
23 church, this unpopular church, many people personally hold  
24 Mr. Jeffs responsible for the continued practice of arranged  
25 marriages and polygamy. There is certainly widespread



1 disapproval, which we know you either know, just you have a  
2 gut sense of that or the survey has told you that. If not  
3 condemn-- there is not only widespread disapproval, but  
4 condemnation of the FLDS Church's practice of polygamy. It  
5 is Mr. Jeffs that most people, again, hold responsible for  
6 this. And this is all happening in Washington County's  
7 backyard.

8 If you juxtapose that notoriety with that of the  
9 alleged victim, Elissa Wall, the James court was concerned  
10 about the age and the vulnerability of the victim in the  
11 James case. In this case, those very same factors are front  
12 and center. The alleged victim in this case is someone that  
13 is described, someone who is able to escape, basically, is  
14 what is said, from the FLDS community. She was 14 or 15, or  
15 14 and 15 at the time of the alleged crimes. And the media,  
16 and I will be talking about this later on, Your Honor, but on  
17 September 2nd, shortly after Mr. Jeffs was arrested, The  
18 Spectrum, I'm not sure if I say his name right, Mister -- is  
19 it Cochero -- anyway, was one of the editors of The Spectrum,  
20 wrote this editorial piece. I won't read it all because it's  
21 in the materials, and I'm sure you read it before. But just  
22 as it relates to one of the James factors itself of  
23 juxtaposing Warren Jeffs with the victim, here we have let's  
24 see here, "Jeffs faces felony sex charges for his alleged  
25 role in arranging, performing the spiritual marriage of a

1 young girl." And later -- that's the problem with this whole  
2 thing, the misuse of faith to hold complete control over an  
3 innocent mind, never mind the talk of fraud and other abuses.  
4 In other words, let's just go ahead and add to it a laundry  
5 list of crummy things that people have to say about Mr. Jeffs  
6 and the FLDS Church. This was a little girl, they might as  
7 well have said a poor little girl forced to become a woman  
8 before she was mentally and physically able to do so.

9 This is the newspaper expressing an unequivocal  
10 opinion piece that depicts, in fact, the innocent victim  
11 versus Mr. Jeffs, this maniacal leader of an unpopular  
12 church. So, I do think if you just do that simple  
13 juxtaposition, which is exactly what the James court asks you  
14 to do when you make that comparison, Mr. Jeffs is clearly not  
15 on the same footing, not at all on the same footing with the  
16 alleged victim in this case. The paper says it. Paper  
17 repeats that over and over again.

18 The size of the community is the second factor, the  
19 size of the community and the familiarity of most of the  
20 Washington County residents with Mr. Jeffs.

21 The James court, quoting from the United States  
22 Supreme Court said, the smaller the community the more likely  
23 there will be a need for a change of venue. And in any  
24 event, when -- I'm sorry, will be a need for change of venue  
25 in any event when a heinous crime is committed. So, if you

1 compare the 120,000 population of Washington County with the  
2 950 or 60,000 in Salt Lake County, again, if you compare the  
3 size of these communities, the James court noted that a major  
4 crime is much more likely to be embedded in the public  
5 consciousness with greater effect and for a longer time than  
6 it would in a larger metropolitan area. Again, Mr. Jeffs is  
7 the recognizable public figure regardless of a juror's  
8 religious affiliation. He is this recognizable figure of the  
9 FLDS Church. Most people in Washington County are certainly  
10 familiar with Mr. Jeffs. And the defendant's status as the  
11 prophet of this church, certainly, makes him stand out.

12 Now, I'm not sure if the court agrees with this, but  
13 again, as it relates to Washington County versus Salt Lake  
14 County, a very important statistic, Your Honor, throughout  
15 was when we asked the folks, although putting this up, don't  
16 look at the man behind the curtain --

17 **THE COURT:** Don't worry about it, counsel.

18 **MR. BUGDEN:** So, you'll remember that we ask the  
19 question, you know, how effective do you think the criminal  
20 justice system is? And we also ask how reliable do you think  
21 the media is in reporting criminal events or events  
22 surrounding a crime. And across -- and also, what percentage  
23 or how many of you got your information from the news media.  
24 On those three questions, Salt Lake County and Washington  
25 County were virtually in a dead heat. You know, we don't

1 have to talk about the statistical margin of error there.  
2 They are just the same, basically.

3 **THE COURT:** But, the source of information, the  
4 community gossip is where there is a statistical and  
5 substantial difference between the two.

6 **MR. BUGDEN:** Right.

7 **THE COURT:** And that's one of the things that James  
8 insists that this court look at.

9 **MR. BUGDEN:** And the language of James is, is there a  
10 reason for you to believe -- as it relates to the standard,  
11 is there a reasonable likelihood that a fair and impartial  
12 jury can't be had in this county? Is there a reasonable  
13 likelihood of that as it relates to the concept of neighbor  
14 to neighbor, neighbor to friend, gossip, rumor mill, whatever  
15 kind of trash talking people have when they talk about a high  
16 profile case, in this case, Warren Jeffs. What does that  
17 say? Is there a reason for you as the judge, being impartial  
18 yourself, is there a reason for you to say that in fact there  
19 is a real reason for us to believe that there is more  
20 consciousness about Warren Jeffs that it is more embedded in  
21 the consciousness of Washington County? That clearly is what  
22 Dan Jones and Diane Meppen tried to say, and as Dan Jones  
23 tried to stand his ground with the withering  
24 cross-examination from the court. That's the point. His  
25 point is, it is more embedded in the consciousness of

1 Washington County than Salt Lake County. An 18 percent  
2 difference, that's not chicken feed. And if you apply the  
3 7 percent, it's still a statistically significant number,  
4 judge. So, is person-to-person talk reliable? You know,  
5 person-to-person talk, that's when you include and insert  
6 your opinions about someone. That's when you include  
7 opinions -- you know, it's not a reliable source of  
8 information. So, people, far more people in Washington  
9 County are talking about it. Again, the big picture color,  
10 that's the point of this, giving color to the numbers in  
11 Washington County, a lot more people are talking, talking  
12 about Warren Jeffs, not just talking about the crime, but Mr.  
13 Jeffs and the FLDS community and polygamy and underage  
14 marriages. That's what they are talking about.

15 Let's talk about the gravity of the offense.

16 Washington County has never encountered -- the state has  
17 given you some appendices that are part of his, state's reply  
18 memorandum to us. Go ahead. Study them all. Look at the  
19 sex abuse cases or the high profile cases or kidnap cases,  
20 fine and dandy. But in terms of Washington County, has  
21 Washington County ever had a more notable or more notorious  
22 or memorable allegation, more notorious crime? I don't think  
23 so. And have any, whatever the names were on the state's  
24 appendix of high profile cases, have any of those people,  
25 have any of those people prompted Ed Kociela -- apologies for

1 the name, if I'm mispronouncing -- had any of them, were any  
2 of them the subject of not just one but two editorials,  
3 actually, many more, but right now I'm just talking about Ed,  
4 expressing the kudos to the state's prosecution team, kudos  
5 to the state for going after the most vilified polygamous  
6 leader since Joseph Smith? Kudos from the newspaper that  
7 furnish, the local newspaper that is furnishing opinions and  
8 data and information about this particular crime. So, as to  
9 the gravity of the offense, you know, in Stubbs, Stubbs, the  
10 court was concerned in, Beaver County, with a rape. Well,  
11 here, it's essentially the same. Although, it's called  
12 accomplice to rape. It's, essentially, exactly the same.

13           Then, I want to talk, which the survey people didn't  
14 talk about, but this is something that you can evaluate for  
15 yourself. Now, I do want to talk about the fourth factor,  
16 which is the amount of bias and the publicity surrounding the  
17 charges. It is true, as the state alleges in their reply  
18 memorandum, that there is widespread media coverage of this  
19 particular case. Of course, we know that. Of course, we  
20 know that. All across the state this is being reported,  
21 whether it be in the Deseret News Today, whether it be in the  
22 Salt Lake Tribune, whether it be on CNN. Yes, this is a case  
23 that has received widespread attention. But what is  
24 different, what is different is if we look at the publicity  
25 that this case has received in Washington County, again,

1 where Hildale and Colorado City are in the backyard, if we  
2 focus for a moment on the news media and, in particular, on  
3 the print media, and that ends up being The Spectrum, if we  
4 look at The Spectrum and the amount of coverage and the type  
5 of coverage, we don't have editorials appearing in the Salt  
6 Lake Tribune or the Deseret News saying, hang him high. We  
7 don't have that. We don't have opinion pieces coming out in  
8 either one of those newspapers saying, hooray to the  
9 prosecutor for prosecuting this guy. We don't have that. We  
10 don't have the Salt Lake Tribune and the Deseret News writing  
11 an opinion piece that I'll talk about in just a minute when I  
12 get to it. But, I'm falling here. Where The Spectrum is  
13 saying to you, Judge Shumate, you should deny this motion  
14 where they name you in the editorial and say that you should  
15 deny the motion.

16           The pervasive publicity in Washington is certainly  
17 different than anything that has appeared in Salt Lake  
18 County. And, again, as it relates to the reasonable  
19 likelihood that this prejudice will taint the jury pool, I  
20 just don't see how you can get beyond how The Spectrum has  
21 weighed in on this case. The Spectrum articles consistently  
22 portray Warren Jeffs in an unfavorable light over and over  
23 again. Whether the article trumpets sympathy for The Lost  
24 Boys or reports that Mr. Jeffs showed up on the FBI's ten  
25 most wanted list, it's all decidedly unfavorable to Warren

1 Jeffs.

2 In May 2004 and August 2006 someone who has fallen  
3 away from the church, Ross Chatwin, compared Mr. Jeffs to  
4 Adolf Hitler and said that his control over the church is not  
5 unlike that dictator. On May 7th of 2007 -- I think that's  
6 the wrong day. It must be of 2006, there is discussion of  
7 Mr. Jeffs appearing on the FBI's Ten Most Wanted List. This  
8 is distributed, the Ten Most Wanted List. In the article, it  
9 says distributed worldwide. It had headshots of Mr. Jeffs.  
10 And then, also, on that same list, and in the article they  
11 compare him to Osama Bin Laden in terms of his notoriety.  
12 Then, the FBI had a reward, again, in The Spectrum article.  
13 \$100,000. On August 30th, a Patrice St. Germaine, again, for  
14 The Spectrum, reported for the manhunt for Warren Steed  
15 Jeffs, did not end as some had speculated, meaning, I guess,  
16 her. It did not end in a hail of gunfire leaving the  
17 polygamous sect with a martyr. This is her article.

18 On September 2nd, 2006, the article I have been  
19 talking about by Ed Kociela, here, the city editor expresses  
20 his opinion on behalf of The Spectrum. And that's the  
21 problem with this whole thing, the misuse of faith to hold  
22 complete control over an innocent mind. Well, that -- then  
23 they go on to say, that's exactly -- "That's exactly what  
24 Belnap" -- Smith, I guess, is the prosecutor in Arizona --  
25 "that's exactly what Brock Belnap" -- I think you can count



1 on his support in your campaign for re-election -- "I think  
2 this is a case where the prosecutors are seeking justice and  
3 morality."

4 Then we have Flora Jessop. A guest editorial with a  
5 headline, "Polygamy Needs Federal Probe." Begins with, "I  
6 escaped polygamy 20 years ago and now help others to escape."

7 Now, December 7th, Spectrum had a headline, "Jeffs'  
8 very look made his followers cower." Goes on to say, "This  
9 is a man who deserves to be sent to prison. This is a town  
10 that deserves to be finally free and live normally."

11 Then, on March 7, 2007, of this year, The Spectrum  
12 article read, "Venue change unnecessary." The Spectrum  
13 actually comes out and takes the position, naming me. It's,  
14 basically, an article of how dare the defense lawyers ask to  
15 change the venue. What an insult to the people of Washington  
16 County to ask that the venue be changed. They even say,  
17 "Bugden even commissioned Dan Jones." As if that's a bad  
18 thing. How else would you measure, how else would you try to  
19 go ahead measuring whether or not Mr. Jeffs will be treated  
20 the same way here as in Salt Lake County or whether or not we  
21 can seat a fair and impartial jury? But, no, The  
22 Spectrum weighs in on this as well to say, how dare Bugden  
23 and the defense team even consider a change of venue. Then  
24 they name you by name and point out that, gee, this could be  
25 very expensive, be very expensive to change venue. Well, to

1 state the obvious, which I'm sure you would agree with, costs  
2 can't possibly be the issue when we are talking about  
3 fairness trying to seat a fair and impartial jury. But I am  
4 happy to report, my kids, my two children, are in college.  
5 They are away at college. I have some spare bedrooms so that  
6 Mr. Belnap and Mr. Shaum are both welcome to stay in my house  
7 to save the state some money in that regard.

8 I also point out, as it relates to the news media  
9 blitz and The Spectrum's position on all of this, judge, I  
10 think it bears repeating exactly what the James court said.  
11 There are limits to what should reasonably be asked from  
12 prospective jurors who have been exposed to repeated media  
13 editorials. These innuendo laden articles and editorials,  
14 day after day, use language that castigate and portray my  
15 client as something akin to Osama Bin Laden. In the media  
16 coverage, here's the bottom line as it relates to the four  
17 factors. The media coverage in Washington County is  
18 decidedly different than the media coverage anywhere else,  
19 whether it be Salt Lake, Iron County, anywhere else. There  
20 is a huge difference in the numbers. And, although, by your  
21 questions have suggested that you can weed out the people who  
22 have opinions through voir dire, I just remind you of what  
23 the supreme court said in State vs. Ball. That the most  
24 characteristic feature of prejudice is the inability to  
25 recognize itself. It's just like the people in a survey

1 analysis that don't want to admit that they don't vote but  
2 they say that they do. And it's just like when a judge says,  
3 with all due respect to judges in general, in a tone of voice  
4 and a rehabilitative tone in mind, but that's the intent --

5 **THE COURT:** You could set that aside, couldn't you,  
6 Mr. Smith?

7 **MR. BUGDEN:** Right. Exactly. Of course, you could  
8 set that aside. Of course, you are not such a racist and  
9 idiot that you couldn't set aside that you didn't like  
10 whatever. So, again, I say there is only so much you can  
11 expect jurors to do. There is only so much you can expect  
12 people to do. And the state points out in State vs. James,  
13 you have this overwhelming response by the community. It's a  
14 one of a kind case, you know, where the community tried to  
15 find the missing child. Remember in Cache County? And Mr.  
16 Belnap's reply, at least part of his reply to me is, well, we  
17 don't have anything like that in this case. The community  
18 wasn't out looking for a victim. But what we do have is the  
19 community, this is all happening in the backyard of  
20 Washington County. We do have a community that, I believe,  
21 is embarrassed by the practice of polygamy and would welcome,  
22 just like one of the articles I sent you last week, you got  
23 Monday, I suppose, just like the person who says, I  
24 volunteer. Let me be on that jury. And if I can't be on  
25 that jury, halleluiah, my daughter will be. And she will

1 certainly convict. And she will certainly do what I can't do  
2 if I don't get chosen.

3 There is a huge difference, Your Honor, in the  
4 "definite guilty." There is a big difference. And it's  
5 unfair, you know, to be intellectually honest to add the  
6 "definitely guilties" with the "probably guilties" and say,  
7 gee, it's just the same. You end up with 75 percent, or 78  
8 in Washington and Salt Lake County. The "probably guilties"  
9 are the area where their minds can still be swayed.

10 **THE COURT:** Counsel, that's the one portion of the  
11 analysis of the poll that you commissioned that bothers me  
12 the most. As I look at the press coverage in this case,  
13 which certainly for Washington County is absolutely without  
14 precedent, and as I look at the press coverage for this  
15 entire region, my parents and brethren in Phoenix, my wife's  
16 aunt in Tucson keep telling us about how I'm on TV throughout  
17 the state of Arizona. Because of that feature, number four  
18 in the James analysis, isn't the court almost forced, out of  
19 an abundance of caution, regardless of where we pick a jury  
20 in this case, to lump those two together? If we were talking  
21 about another first degree felony, but one without press  
22 coverage, an armed robbery, I would feel a lot more  
23 comfortable in keeping the probably guilty people, at least,  
24 long enough to ask them, well, what do you think about  
25 setting that aside. And we wouldn't do it here in the main

1 body of the courtroom where all the other jurors are there to  
2 get a group mentality concept going, but we would do it one  
3 juror at a time in chambers, in a much more relaxed but much  
4 more probative setting.

5 **MR. BUGDEN:** I have two responses. First, as to the  
6 numbers, you know, we are just going to make perhaps --  
7 obviously, you are the judge. We are going to have to  
8 perhaps to agree to disagree. But what the pollsters have  
9 told us, what Diane Meppen explained is the probably guilty  
10 is not like definitely guilty. It's a different category.  
11 It's a different animal.

12 **THE COURT:** Aren't I safer in even avoiding that?

13 **MR. BUGDEN:** Well, sure. Sure. But the point is,  
14 which is what Mr. Jones was trying to articulate, and what  
15 both of them are saying, and what I'm saying to you, is that  
16 because of the media coverage, because of all the factors,  
17 but including the media coverage, there is a significant  
18 difference in the body of people you will pick this jury from  
19 in Washington County where there is a much larger opinion, 52  
20 to 39 percent believe already that he's definitely guilty.  
21 And then in the probably guilty where Salt Lake has a larger  
22 percentage, the beauty of that, and what favors Salt Lake  
23 County then, is that in that category the people are not  
24 definite. They can be swayed. You can at least see some  
25 movement. So, my point is, as it relates to starting with

1 people that don't have an opinion, people that are more  
2 likely to be impartial, I think that the survey is important  
3 in that regard.

4 As to your comment about your relatives, or anyone  
5 who has followed the case, whether it be in New Jersey or in  
6 Arizona or wherever, because there has been widespread  
7 publicity, what's different is that this is happening in  
8 Washington County. And -- and, like Cache Valley, where the  
9 residents of that community rally to the cause, try to find  
10 the young boy, I think it was a boy, it's similar here where,  
11 at least in Washington County, where Hildale and Colorado  
12 City are in the backyard here, places that practice this  
13 unpopular concept of polygamy, here you have, in Washington  
14 County, you have massive negative publicity that the people  
15 in Arizona haven't read Ed Kociela. They haven't read that.  
16 They haven't been bombarded daily by The Spectrum taking a  
17 position that, let's go ahead and hang him right now. We  
18 don't need to have a trial. That's different.

19 At the end of the day, the standard is, is there a  
20 reasonable likelihood? That's the standard. And when you  
21 look at these four factors, I believe that it's clear that  
22 there is a reasonable likelihood that impartial jurors will  
23 not be had here. And, again, saying what the United States  
24 Supreme Court has said and repeated by the Utah Supreme Court  
25 in James, reversals are merely palliatives. It's just like

1 exercising a peremptory cause, or striking for cause, rather.  
2 Striking for cause, where the supreme court has said there is  
3 no reason not to do that. I would say as it relates to the  
4 change of venue with the evidentiary picture that you have,  
5 with the amount of publicity and the response particular to  
6 Washington County, I would say, and we certainly believe, is  
7 that the safe bet, and what you need to do in order to ensure  
8 that this man receives a fair and impartial trial is to use  
9 the simple mechanism of changing the venue to a county where  
10 there is a more diverse population and where people don't  
11 have as much opinion about Warren Jeffs, where there aren't  
12 as many people talking and gossiping about Warren Jeffs.  
13 And, in the language of James, where it's substantially  
14 further away from where the crime allegedly occurred, where  
15 there is less contact, less of a nexus, less of a commitment  
16 to sort of ridding ourselves of this problem in Washington  
17 County, I think when you look at the whole picture, there  
18 certainly is, again, back to the language of James, a  
19 reasonable likelihood that a fair and impartial jury can not  
20 be had here. And it will certainly be better and safer for  
21 this defendant, in the most high profile case ever to come to  
22 Washington County, that you move it out of this county.  
23 There is only so much you can expect jurors to do. And there  
24 is only so much, no matter how skilled you might be at voir  
25 dire, judge, in us ending up at the end of the day with a

1 fair jury. So, I say, again, the most important moment in  
2 the trial is when we pick that jury. And if we are going to  
3 start with a jury that already have bias, whether they  
4 express that to us or not, it makes sense to move the case to  
5 Salt Lake County.

6 **THE COURT:** Thank you, counsel. Mr. Belnap, on  
7 behalf of the state.

8 **MR. BELNAP:** Thanks, judge. The standard is whether  
9 it would be reasonably likely that we could not set a fair  
10 and impartial jury here in Washington County. And the state  
11 agrees we have an obligation to do justice in this case. But  
12 it is reasonably likely that we would set a fair jury in this  
13 case. The data submitted by defense shows that the same  
14 amount of people, approximately, in Washington County as in  
15 Salt Lake County, have no opinion yet of the case. If you  
16 take, for example, The Spectrum's presence here in Washington  
17 County and its press coverage, the fact that Hildale is in  
18 our backyard, all of the other factors identified by Mr.  
19 Bugden, nonetheless, 22 percent, 20 percent, their very own  
20 data shows that here in Washington County a greater number of  
21 people have yet to make up their mind regarding whether the  
22 defendant is guilty or innocent. And that's --

23 **THE COURT:** But, counsel, of that 20 percent, it's  
24 more than twice as likely that they have been exposed to  
25 community gossip. That's the other salient figure that comes



1 out from this survey, as I see it. That the information that  
2 they were receiving is community gossip as opposed to press  
3 coverage or TV coverage. How do you see that?

4 **MR. BELNAP:** Well, Your Honor, the survey asks, what  
5 is the source of your information? And it's 90 odd percent  
6 said, in every county, the press. In Washington County,  
7 30 percent said, family. That means they are getting it from  
8 the press and they are getting it from family. I think it's  
9 fair to conclude that people in Washington County are  
10 probably talking about this case more than they are in other  
11 counties, including Salt Lake County. But, given that fact,  
12 you still have the same percentage reporting that they have  
13 not yet formed an opinion regarding the case. And, as the  
14 court said, if you extrapolate from the 300 jurors that we  
15 are talking about bridging in, that means you are going to  
16 get 66 jurors from the data that have yet to form an opinion.  
17 And you are going to have that whether you are in Salt Lake  
18 County, which has a vast majority of press representatives,  
19 or here in Washington County. That is not going to be any  
20 different depending on where we are at. And also, we have  
21 got the whole tolerance of error to throw in there. So, let  
22 me turn to the James factors and the way the state sees them.

23 The first is the relative standing of the defendant  
24 and the victim. And, of course, that goes to potential  
25 prejudice against outsiders and people who are different.

1 The fact of the matter -- and that's a relative thing too.  
2 The fact that is that neither the victim or the defendant  
3 have any particular standing in Washington County. Neither  
4 are insiders. And both of them probably can be characterized  
5 as outsiders. If you are going to characterize the victim  
6 just because of the victim status as having special status,  
7 that eliminates your ability to set a fair and impartial  
8 jury, you would never be able to. So, you have to look at  
9 what they are. And neither of them are relatives, related  
10 to, like, the mayor, or they are not his daughter, like it  
11 said in that one case. They don't have ties to our community  
12 that are unique, that would mean that somebody on the jury  
13 might know them and want to rule one way or the other for  
14 them based upon their personal connection with them. Also,  
15 to the extent that the defendant is different from the  
16 residents of Washington County is going to be different from  
17 the residents of Salt Lake County as well. Remember this one  
18 case the supreme court indicated, that they had a concern  
19 about the difference because of this particular defendant had  
20 a earring and long hair. And the people in that small  
21 community might think he was different. That was an  
22 articulated concern of the supreme court. Well, that's going  
23 to play into the James factor. It's not a factor here. It's  
24 not a basis to change venue.

25 The second factor, of course, is the size of the

1 community. And that goes to personal involvement in the  
2 crime by the jurors. As the Logan case involved, you know,  
3 there was a big community effort to get involved in the  
4 search. And there were flyers and volunteers and all that  
5 sort of thing. We don't have that in this case. What we  
6 have in this case is people who have read about it which  
7 isn't enough. Then you have some people who are getting a  
8 source, 30 percent supposedly, their source of their  
9 information in addition to the news is talk about it with  
10 others. There is no case precedent to say that that is a  
11 basis to change venue.

12 The third one, the third factor, is the nature and  
13 gravity of the offense. Don't want to in any way minimize  
14 the crime of rape. But it's whether or not it embeds itself  
15 in the consciousness of the public. Well, unfortunately, as  
16 this court's very well aware, Washington County is not so  
17 small any more that a single case of rape is going to imbed  
18 itself in the consciousness in the mind of the public. And  
19 the data that we received from Dr. Jones shows that despite  
20 all of the stuff that's circulating around, the same  
21 percentage of people in Washington County as in Salt Lake  
22 County have yet to form an opinion, which indicates that it's  
23 not imbedding itself in the consciousness of the people here  
24 any more than it would be in Salt Lake County.

25 Finally, of course, is the nature and extent of

1 publicity. And, as Dr. Jones said, and counsel acknowledged,  
2 the nature and extent of the publicity has been extensive  
3 everywhere. In fact, if you add the two together, more  
4 people in Salt Lake County actually have a preconceived view  
5 of guilt than they do here in Washington County. If the  
6 court's going to change venue, Rule 29 (d) says the court  
7 should move it to a place free from the objection. Free from  
8 the taint of prejudice, as another court expressed it. We  
9 don't have that circumstance here. None of the James factors  
10 add up to a requirement that the court change venue or that  
11 give us an indication we can move to a place that's free from  
12 this supposed objection. So, let me talk a little bit about  
13 the survey of why it doesn't really translate to a jury pool.

14           You know, Your Honor, I heard Miss Meppen say that  
15 it's difficult, it's a challenge to form a survey that  
16 doesn't introduce bias or put them into the words. Well, if  
17 you look at the words in paragraph 16, which is the objective  
18 question that solicited their information. It says, "In your  
19 own personal opinion, do you feel the suspect is guilty or  
20 innocent of the crime?" Well, Your Honor, look at the word  
21 "suspect." The word "suspect" connotes a suspicion.  
22 Suspicious. Suspicious. Suspicion. It's not neutral in its  
23 language. It suggests a result. And then they ask them, the  
24 very first one. Definitely guilty. Probably guilty. As  
25 they read down the line. The question itself is not neutral.

1 It's not the kind of question that a court would ask during  
2 voir dire. Then it asks for a feeling. Well, what's your  
3 feeling? Well, a feeling is not the same thing as a settled  
4 belief or a conviction. The survey didn't go into the kind  
5 of questions that the court would do on voir dire. It didn't  
6 impose the sanctity of the courtroom, you know, the rising to  
7 occasion that comes from that sort of experience.

8 **THE COURT:** Counsel, Mr. Jones was not at all  
9 impressed with the sanctity of the court.

10 **MR. BELNAP:** The survey questions only lasted six  
11 minutes. No one had the impression placed on them, they were  
12 placed under oath and need to answer truthfully. Now, that's  
13 a far cry from the probing analysis that competent counsel  
14 and an experienced judge do to get to the truth of the kind  
15 of question that Dr. Jones and Miss Meppen said that they  
16 couldn't even come up with on a survey. The survey result  
17 would probably be a little different if they were to ask  
18 other than these kind of questions, the kind of questions,  
19 Could you be a fair and impartial juror? I don't know how  
20 they could design that. But that's not the survey that they  
21 asked. So, the survey is not a reliable indicator of the  
22 potential biases of the folks that were questioned. That's  
23 why the supreme court -- you know, Your Honor, the Supreme  
24 Court of the state of Utah, in two different cases, has  
25 rejected or has said that change of venue is not required.

1 One, in Ronnie Lee Gardner, '92, 90 percent of the people  
2 surveyed thought that he was guilty. And, in Bishop,  
3 82 percent of the people thought that he was guilty. That  
4 didn't compel a change of venue. In fact, supreme court said  
5 that the court was free to disregard the survey in its  
6 discretion.

7 If the court's going to change venue, then the state  
8 asks that we change it to a place free from the objection.  
9 And there is no objection, there is no place that we can go  
10 that is free from the alleged objection. The people of  
11 Washington County can set a fair and impartial jury. Their  
12 own survey proves it. The James factors don't require it.  
13 The court and counsel must do a probing, fair and competent,  
14 professional job in selecting a jury wherever we go. And we  
15 can do it here in Washington County just as easy as we can in  
16 Salt Lake County. Thank you, Your Honor.

17 **THE COURT:** Thank you, counsel. Well, this court has  
18 had it made abundantly clear from the Utah Supreme Court that  
19 the factors in James must be applied. And it's my job to go  
20 through those factors now and make some determinations.

21 With respect to the standing of the defendant and the  
22 victim within the community, the first James factor, the  
23 defendant does have a substantial standing in the community  
24 by virtue of the press attention that he's given. This is a  
25 unique circumstance because Mr. Jeffs is not known

1 personally. And were it not by the virtue of the press  
2 attention paid to Mr. Jeffs, he has made no effort to make  
3 himself personally known outside of Colorado City/Hildale  
4 area, Washington County. He's made no effort to do that.  
5 But the spotlight of media attention has given him a standing  
6 in the community that he otherwise would not have had. And  
7 there is no evidence that he sought that at all.

8           The victim has no standing in the community at all.  
9 She is a young woman, unknown in Washington County outside of  
10 her own community, which is a very closed and insular  
11 society. She simply is not like the victim in Stubbs, who  
12 was the granddaughter of the football coach at the high  
13 school in a county of only 6,000 people. There is a  
14 substantial difference here between Stubbs, as I look at  
15 factor one of the James case.

16           Factor two is the size of the community. Stubbs and  
17 Widdison are Beaver and Millard counties respectively. Both  
18 of them together do not make a high percentage of the  
19 citizenry of Washington County. The court is impressed with  
20 the data offered by the state in its memoranda that  
21 Washington County has the highest percentage in the whole  
22 state of persons not born in the state of Utah. Washington  
23 County, I suspect, has less likelihood of being an insular  
24 community as you might find in other sections of the state.  
25 We may not have as many different colors of faces and

1 certainly not as many different people as are found in Salt  
2 Lake County, but we are remarkably diverse considering the  
3 history of the area.

4           The gravity of the offense is of high degree. And,  
5 frankly, this is a factor that can only be found out in the  
6 voir dire process. It has been always amazing to this court,  
7 both in my years on the bench and as my years as a practicing  
8 trial lawyer in Southern Utah, 15 years -- 15 and-a-half  
9 years as a trial lawyer and now over 16 years on the bench,  
10 that cases that the legal community and the law enforcement  
11 community and the court's community have seen as extremely  
12 important, high profile, are so rarely known by the people  
13 coming in for jury voir dire in Southern Utah, which I have  
14 worked in almost exclusively. So, it's difficult for a  
15 sitting judge or a practicing attorney to look at the gravity  
16 offense factors as a jury, apparently, does. My experience  
17 tells me that jurors look at all crime as an important  
18 matter. But specific crimes, regardless of their heinous or  
19 non-heinous nature, carry little weight, in my experience, of  
20 upwards of four or 500 jury trials.

21           The greatest concern in James is the court's greatest  
22 concern throughout and has been this court's greatest concern  
23 throughout this procedure. And that is the bias of the media  
24 attention here within Washington County. And it is  
25 unfortunate that I see that the reporter for The Spectrum has



1 parted us, probably, for a deadline. But the evidence that  
2 the court has received from the defense in this matter, which  
3 are direct photocopies of articles, letters to the editor,  
4 and op-ed piece from this local paper, constitute an  
5 unfortunate and unjustifiable drum beat to impact this case  
6 in an inappropriate fashion. That is an abuse of the nearly  
7 unfettered power that the press has. The press has an  
8 obligation to, within the needs of its required job, to avoid  
9 attempting to impact the outcome of an important dispute  
10 between the state of Utah and a criminal defendant. And  
11 there is no place in American society for those who buy their  
12 ink by the barrel, to try to convict someone prior to trial.

13 Of the four James factors, number four, the bias and  
14 the publicity is the most weighty one that the court sees.  
15 And, counsel, I am most concerned about our ability to reach  
16 that standard that the courts must reach of a reasonable  
17 likelihood of a fair and impartial jury being impaneled here  
18 in Washington County. When the court sees the kind of  
19 language that has been submitted to it from the local media,  
20 the ability to find a reasonable likelihood is substantially  
21 impaired. What I do not know is whether or not it has been  
22 fatally impaired. And I can not know until I attempt to  
23 impanel a jury locally. So, the motion for change of venue  
24 is at this stage and without prejudice overruled and denied.  
25 But it may be granted immediately during the voir dire

1 process if we can not reach that reasonable likelihood that  
2 the court is seeking.

3 Now, counsel, I have thrown in a factor here that  
4 neither James nor Stubbs nor Widdison has been addressed by  
5 the appellate courts of this state. Stubbs would tell you  
6 immediately, Mr. Bugden, to take an interlocutory appeal to  
7 the supreme court based upon my ruling. The supreme court, I  
8 know, will look at my ruling, and based upon that ruling make  
9 its decision as to whether or not this is an appropriate  
10 course to follow to begin to try to impanel a jury. We can  
11 all see from the, I think, reliable and substantive  
12 information drawn from the Jones poll that the only  
13 reasonable way to impanel a jury is to disqualify those who  
14 have expressed any opinion as to Mr. Jeffs' innocence or  
15 guilt. And, as we go through that process, any idea that  
16 anyone can be rehabilitated by that leading question, yes,  
17 but you could set that aside, couldn't you, we are probably  
18 not going to do much of that. But it will be on an  
19 individual basis. And it will be done with very careful  
20 attention. And, counsel, I can tell you this, if we bring in  
21 300 people, and can not seat, for peremptory challenges, at  
22 least 25 in order to get the necessary alternates and eight  
23 jurors, the minute we run down to number 24, this motion will  
24 be granted and will leave this county. And that may be most  
25 costly. It may be most time consuming. It may take more of

1 the court's time than, frankly, this or any other court in  
2 the state has. And that may well be laid at the feet of  
3 those who exceed reasonable press coverage.

4 Anything else we need do from your standpoint, Mr.  
5 Bugden?

6 **MR. BUGDEN:** Yes, sir. As soon as the court, with  
7 the state's help, has an opportunity to prepare an order, a  
8 final order, on actually all three matters that you have  
9 ruled on today, but the one, well, really, all three matters,  
10 the change of venue and the refusal to quash any aspect of  
11 the bindover, and also the constitutionality of the word  
12 enticement, I need an order, you know, final order from which  
13 we can appeal. I also need to ask the court, or, I'm asking  
14 you today to enter a stay -- we don't have a trial date, but  
15 I would ask you to enter a stay, not of the whole proceeding,  
16 because we intend to move forward with the court on  
17 April 23rd and several days thereafter on a variety of  
18 evidentiary motions that need to be decided. But, I want to  
19 stay the case. I want to be able to continue to communicate  
20 with the court, the trial court, and continue to prepare the  
21 case for trial. But I would ask you to at least stay the  
22 proceeding as it relates to the trial in order to afford us  
23 an opportunity to petition the supreme court for an  
24 interlocutory appeal.

25 **THE COURT:** Counsel, I take my direction from the

1 supreme court. If the supreme court in considering your  
2 petition for interlocutory appeal orders a stay, I will stay  
3 whatever they want me to stay. Mr. Jeffs is presumed  
4 innocent. He is residing in the county jail right now. And  
5 I will not stop this case from having a trial setting unless  
6 I am instructed by a superior judicial authority. In all  
7 deference to your position, counsel, I know exactly why you  
8 are doing that, Mr. Bugden, but the ends of justice from this  
9 judge's standpoint say we go to trial to try to resolve these  
10 issues as quickly as we possibly can. And we'll let the  
11 supreme court tell me if I have to stop. I appreciate the  
12 request, counsel, but I can't grant it under these  
13 circumstances.

14           However, I would like a final order on this matter.  
15 You all have faxes. I would like to be able to sign a final  
16 order on Monday. Is there any problem we can't get that  
17 together by then?

18           **MR. SHAUM:** No.

19           **THE COURT:** All right. And I would like your  
20 approval as to the form of the order, not necessarily the  
21 content, Mr. Bugden, but I would like to see your approval  
22 before I sign it as well. I want to make sure you have had a  
23 chance to go over it. Anything else this court needs to  
24 address at this time?

25           **THE DEFENDANT:** May I approach the bench?

1           **THE COURT:** I'm sorry, Mr. Jeffs. You may not, sir.

2           **THE DEFENDANT:** I just need to take care of one  
3 matter.

4           **THE COURT:** Mr. Jeffs, your counsel can take care of  
5 matters for you.

6           **THE DEFENDANT:** Pardon?

7           **THE COURT:** Your counsel can take care of matters  
8 that need to come before the court, sir. Thank you,  
9 everyone. We are in recess.

10           **THE DEFENDANT:** Can I take care of it right now?

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

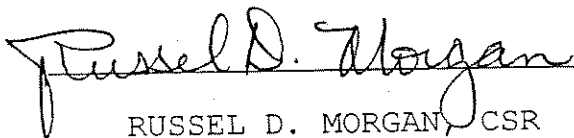
C E R T I F I C A T E

STATE OF UTAH

COUNTY OF WASHINGTON

THIS IS TO CERTIFY THAT THE FOREGOING PROCEEDINGS WERE  
TAKEN BEFORE ME, RUSSEL D. MORGAN, A CERTIFIED SHORTHAND REPORTER  
IN AND FOR THE STATE OF UTAH, RESIDING AT WASHINGTON COUNTY,  
UTAH;

THAT THE PROCEEDINGS WERE REPORTED BY ME IN STENOTYPE,  
AND THEREAFTER CAUSED BY ME TO BE TRANSCRIBED INTO TYPEWRITING,  
AND THAT A TRUE AND CORRECT TRANSCRIPTION OF SAID TESTIMONY SO  
TAKEN AND TRANSCRIBED TO THE BEST OF MY ABILITY IS SET FORTH IN  
THE FOREGOING PAGES NUMBERED FROM 5 TO 170 INCLUSIVE.



RUSSEL D. MORGAN, CSR

LICENSE #87-108442-7801

MAY 10, 2007

\$	2006 [3] 121/11 121/21 121/23 2006 [3] 149/2 149/6 149/18	6
\$100,000 [1] 149/13	2007 [7] 1/17 5/1 5/4 121/13 149/5 150/11 171/19	6 percent [2] 72/10 111/6 6,000 [1] 164/13 6.9 [2] 72/24 75/4 6.9 percent [4] 72/25 73/13 105/22 106/16 60 [1] 137/13 60,000 [1] 144/2 600 [1] 74/12 62 percent [1] 100/1 65 [1] 76/12 66 [2] 137/12 158/16 675,000 [1] 120/25 676,000 [1] 121/9 68 [2] 78/5 106/22
'62 [1] 118/5	206 [2] 72/23 130/18	
'92 [1] 163/1	20th [1] 69/1	
0	21 [3] 11/4 14/10 31/23	
061500526 [1] 1/6	210 [1] 72/22	
1	212 [2] 72/21 72/23	
1 million [1] 121/16	22 [4] 23/10 78/20 99/1 99/1	
1 percent [3] 98/13 107/23 107/23	22 percent [9] 108/7 127/9 130/20 131/2 131/7 131/23 133/7 133/11 157/19	
10 [14] 30/14 30/17 30/22 30/23 37/14	220 [1] 1/12	
37/25 38/25 40/1 43/2 43/5 47/22 49/19	23 [4] 93/16 93/17 109/8 114/2	
56/18 171/19	23 percent [1] 95/25	
10 million [1] 75/10	23rd [1] 61/14	
100 [1] 74/12	24 [2] 78/20 167/23	
100 percent [1] 72/5	25 [1] 167/22	
100,000 [1] 128/11	26 [1] 64/5	
11 [6] 5/21 20/23 29/22 47/23 78/10 99/1	26 percent [1] 98/10	
11 percent [1] 99/1	26th [1] 61/14	
117,385 [1] 121/23	27 [4] 1/17 5/1 64/5 87/16	
12 [4] 80/1 80/11 109/8 140/8	27,000 [1] 121/10	
12 percent [5] 80/8 81/3 92/7 108/25 114/4	278 [2] 69/22 69/23	
120 [1] 64/18	27th of [1] 5/4	
120,000 [1] 144/1	28,000 [1] 75/10	
125 [1] 69/16	29 [1] 161/6	
125,000 [1] 121/5	2nd [2] 142/17 149/18	
12:30 [1] 60/14	3	
12th [1] 68/20	3 percent [3] 75/2 104/22 105/6	
13 [5] 79/19 92/3 95/23 108/16 108/16	3-D [1] 101/1	
13 percent [1] 95/14	30 [7] 26/22 105/17 109/7 109/12 128/6 128/8 160/8	
137 [2] 34/23 46/23	30 percent [8] 79/25 80/7 80/11 81/1 92/7 108/21 113/24 158/7	
14 [10] 9/13 10/6 10/10 10/24 12/15 40/17	300 [9] 2/16 74/13 74/19 74/22 133/10 133/19 137/11 158/14 167/21	
49/4 52/3 142/14 142/15	3000 [1] 118/12	
148 [3] 31/22 34/10 34/17	30th [1] 149/13	
149 [1] 34/10	32 percent [1] 99/25	
15 [10] 23/13 80/1 135/16 137/20 137/23	39 [2] 106/10 106/12	
141/16 142/14 142/15 165/8 165/8	39 percent [4] 93/13 93/18 96/1 154/20	
15 percent [1] 80/12	4	
150 [1] 2/12	4 percent [5] 72/3 72/10 75/2 122/8 122/16	
16 [17] 18/14 38/13 76/16 76/17 82/24	40 [1] 132/9	
88/18 97/6 97/16 97/23 105/24 105/24	40 percent [1] 119/12	
110/2 110/10 110/16 110/17 161/17 165/9	400 [6] 74/23 74/23 74/25 128/6 128/7 133/19	
16 percent [2] 96/1 96/7	404 [1] 20/23	
17 [4] 11/5 14/11 23/9 31/13	404.1 [2] 30/23 33/1	
170 [2] 47/22 171/13	406 [6] 5/21 29/22 30/14 30/22 49/19 52/8	
178 [1] 2/5	40th [1] 69/1	
18 [8] 23/14 31/4 37/16 39/20 42/16 49/24	41 [1] 104/24	
121/18 131/25	44 [4] 104/21 105/2 105/14 132/3	
18 percent [2] 80/9 146/1	445 [1] 2/12	
19 [10] 8/7 12/15 18/14 22/7 23/13 28/9	45 [1] 64/20	
31/23 40/17 98/17 109/9	47 [3] 104/22 104/24 105/14	
19 percent [2] 98/12 114/8	48 percent [1] 100/3	
1956 [1] 118/3	5	
1968 [2] 118/4 118/5	5 percent [3] 72/3 72/9 75/1	
1980 [3] 63/5 63/24 64/11	50 [3] 99/6 100/3 105/2	
1:30 [1] 60/12	50 percent [2] 105/20 105/20	
1:45 [2] 60/16 60/17	500 [3] 89/23 133/10 165/20	
2	52 [3] 38/13 98/9 154/19	
2 percent [1] 87/15	52 percent [1] 93/12	
20 [2] 78/21 150/6	5272 [1] 2/9	
20 percent [7] 108/1 108/4 131/6 132/9 133/12 157/19 157/23	53 percent [2] 98/9 99/24	
200 [24] 1/12 2/5 2/9 2/12 69/4 69/5 69/5	54 percent [1] 93/12	
69/12 72/21 73/13 74/13 75/5 75/11 75/12	55 percent [1] 64/20	
130/25 131/10 131/15 132/2 132/7 132/11	58 percent [1] 126/17	
133/8 133/10 133/19 138/6		
2000 [1] 121/12		
2004 [1] 149/2		
		7
		7 percent [2] 114/7 146/3 70 percent [3] 105/17 126/10 126/24 700 [1] 123/17 701 [1] 2/16 71 [1] 106/21 72 [1] 78/6 72 percent [1] 78/5 73 percent [1] 78/6 75 [2] 69/15 106/14 75 percent [4] 106/8 115/6 115/24 153/7 76-5-404 [1] 20/23 76-5-404.1 [1] 30/23 76-5-406 [5] 5/21 29/22 30/14 49/19 52/8 78 [2] 106/12 153/7 78 percent [3] 78/16 115/5 115/23 7801 [1] 171/18 79 [1] 98/17 792 [1] 46/23 7th [2] 149/5 150/7
		8
		800 [1] 123/14 82 [1] 106/21 82 percent [2] 78/16 163/3 84111 [1] 2/13 8413 [1] 2/9 84770 [2] 1/13 2/6 85 [1] 106/20 85 percent [1] 119/11 85,000 [1] 121/9 87-108442-7801 [1] 171/18 89101 [1] 2/16
		9
		9 o'clock [1] 5/5 90 [1] 158/5 90 percent [1] 163/1 93 [1] 121/24 933,416 [1] 121/24 94 percent [1] 79/14 950 [1] 144/2 96 percent [1] 79/14 97 percent [1] 79/15 98 [1] 87/12 99 [2] 98/8 98/9 99 percent [1] 87/12
		A
		abandon [1] 12/21 abetted [1] 44/1 ability [5] 110/18 159/7 166/15 166/20 171/12 able [18] 13/19 19/16 35/18 39/13 50/5 50/11 67/1 86/1 86/11 119/5 119/24 128/19 131/25 142/13 143/8 159/8 168/19 169/15 about [188]